
(2013) 02 MAD CK 0114

In the Madras High Court

Case No : Writ Appeal No's. 2532 to 2535, 2536 to 2540, 2608, 2625 and 2628 of 2012

M/s. Integrated Service Point Private Limited

APPELLANT

Vs

The Director of Sugar and Others

RESPONDENT

Date of Decision : 26-02-2013

Acts Referred:

Tamil Nadu Transparency in Tenders Rules, 2000 — Rule 20, 21

Citation : (2013) 3 MLJ 201

Hon'ble Judges : M. Venugopal, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : A.R.L. Sundaresan in W.A. Nos. 2532 to 2535 and 2536 to 2540 of 2012 for Mr. Mani Sundar Gopal in W.A. Nos. 2532 to 2535 of 2012, Mr. R. Saravanakumar in W.A. Nos. 2536 to 2540 of 2012, Mr. P.S. Raman, for Mr. V.P. Raman in W.A. Nos. 2608 and 2625 of 2012, for the Appellant; A. Arulmozhi, for Respondent-1 in all WAs Mr. P.H. Arvind Pandian A.A.G. Assisted by Mr. S.T.S. Moorthy, Spl. G.P. Mr. Bala Ramesh, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

Elipe Dharma Rao, J.—All these writ appeals arise out of the common order passed by the learned single Judge in W.P. Nos. 23393,

24821, 25116, 25212, 25250 and 25230 of 2012, dated 19.10.2012. Since the issues involved in all these writ appeals are same and inter-

connected, they were heard together and disposed of by this common judgment. In the writ petitions, except W.P. No. 25230 of 2012, the facts

are identical and the necessary facts that lead to filing of the writ petitions and the writ appeals are as follows:-

The petitioners, except in W.P. No. 25230 of 2012, are the shareholders of Kallakurichi-II Co-operative Sugar Mill, a Co-operative Society

Registered under the Tamil Nadu Co-operative Societies Act. The Special Officer

of the Tamil Nadu Co-operative Sugar Federation Limited (in short "the Federation") issued open auction-cum-tender notice dated 06.06.2012 for sale of 1 lakh MTs of molasses for the purpose of export to other countries and the same was published in Tamil and English dailies on 07.06.2012. As per the notification, sealed tenders were invited for the sale of molasses and qualified exporters alone were eligible to participate in the said open auction-cum-tender. The last date for issuance of tender forms was fixed as 14.06.2012 and the last date for submission of filled up tender forms was 11.00 a.m. on 15.6.2012 and the opening of Part-I tender was at 11.30 a.m. on 15.6.2012. In the said tender process, including the appellants, others had also participated. In the said open auction-cum-tender, 1 lakh MTS of molasses were sold at a uniform price of Rs. 1,410/- per MT to the appellants. According to the writ petitioners, in order to choose the appellants as the successful tenderers for the sale of molasses, the procedure which was sought to be strictly followed was thrown away. According to them, the molasses of similar nature were fetching higher price in the neighbouring States and, therefore, in order to benefit the appellants, the respondents 1 and 2 viz., the Director of Sugar and the Federation have sold the molasses to the appellants at a throw-away price. On the aforesaid facts, they sought to quash the open auction-cum-tender notice dated 06.06.2012 and for a direction to the respondents 1 and 2 to fix the sale price for molasses on par with the sale price fixed by the neighbouring States of Tamil Nadu.

2. The Director of Sugar, the 2nd respondent in the appeals, in the counter affidavit filed in the writ petitions has averred that the Special Officer of the Federation by letter dated 20.03.2002 has informed that the public sector sugar mills are having a stock of 1,00,036 MTs of molasses for sale as on 15.3.2012 and there will be an additional quantity of molasses generation to the tune of 70,000 MTs after March 2012 and since the storage capacity is not sufficient, the molasses may be sold. In turn the Director sought the permission of the Government by the letters addressed by him dated 20.03.2012, 30.03.2012 and 25.04.2012 for export of a minimum quantity of 1 lakh MTs of molasses and the Government by its letter dated 05.06.2012, granted approval for export of 1 lakh MTs of molasses. Thereafter, the tender for sale was floated by giving wide publicity in

newspapers, Government's website and Sugar Federation's website. Before conducting open auction, the Molasses Sales Committee met and

fixed the upset price for open auction at Rs. 1,375/- taking into account the sale of molasses during 2011 and the prevailing market rate. However,

though the successful tenderers have quoted rates ranging from Rs. 850/- to Rs. 1,100/-per MT., on negotiation, finally the rate was fixed as Rs.

12,410/- per MT for all the mills. In the counter, the allegation that the procedure established was not followed was stoutly denied. It was also

stated that there was no cartelisation of tenderers and if the molasses is not sold, the Federation will be driven to a position of distress sales during

the crushing season and it will fetch only a lesser rate. It was also averred that the successful tenderers have lifted 41,472 MTs out of 1 lakh MTs

of molasses.

3. In the counter affidavit filed by M/s. Suraj Agimpex House in W.P. No. 23393 of 2012, it sought for dismissal of the writ petition on the ground

of maintainability. It was indicated in the counter that a lone member of one of the Co-operative Sugar Mills is incompetent to maintain a writ

petition of this nature, particularly when molasses is controlled by Molasses Control Order, 1958 and if at all the writ petitioner has any grievance,

the same should have been resorted to as contemplated under the Co-operative Societies Act and the writ jurisdiction of this Court ought not to

have been invoked. On merits, it was stated that the rate fixed for molasses is not arbitrary and it is strictly in consonance with the price prevailing

in neighbouring states and taking into consideration the rate prevalent in the previous year. It was further stated that the nature of molasses may

vary from State to State and without knowing the nature of molasses available in other States, uniform price cannot be adopted and the price

fixation was done after considering various factors such as demand and supply, quality of molasses, industrial recession etc.. The allegation that the

sale of molasses was fixed at a throw-away price to benefit certain individuals was strongly denied.

4. The appellant in WA. Nos. 2532 to 2536 of 2012, viz., Integrated Service Point Private Limited, as a successful tenderer, preferred W.P. No.

25230 of 2012 seeking a direction to three sugar mills to act in terms of the sale order dated 4.7.2012 issued by the Federation and to permit him

to lift the balance 7,070 MTs out of 20,000 MTs of molasses. According to him, when he was not a party to W.P. No. 23393 of 2012 and there

was no interim order restraining him from lifting the molasses, he should be permitted to lift the balance of molasses.

5. On the aforesaid factual background and hearing the counsel for all the parties, the learned single Judge framed the following issues for

consideration:-

(i) Whether the writ petitions, seeking to declare the sale of molasses to three companies as illegal as the public property was sold at a throw-away

price and for a direction to hold fresh auction, are maintainable ?

(ii) Whether the Tami Nadu Transparency in Tenders Act, 1998 applies for ""sale"" of public properties and in the event of the Act being applicable

for ""sale"" of public properties also, whether the open auction-cum-tender process is vitiated for not following the Act and the Rules made

thereunder, in the process of sale of 1 lakh MT of molasses by the Federation ?

(iii) If the Tami Nadu Transparency in Tenders Act, 1998 is not applicable for sale of public properties, whether the open auction-cum-tender

process in respect of sale of 1 lakh MT of molasses to outside country and State was made in a transparent manner, giving vide publicity so as to

get the best possible price for the public property and whether adequate time was given for submission of filled up tender forms ?

(iv) Whether the Federation and the Molasses Sales Committee erred in fixing Rs. 1,375/-per MT as the upset price for public auction of molasses

resulting in the sale of 1 lakh MT of molasses at a throw-away price?

(v) Whether the three companies formed cartel in the sale of 1 lakh MTs of molasses and controlled the sale price by concerted action?

(vi) Whether the action of the respondents 1 and 2 in the entire process of sale of molasses is mala fide, so as to favour the three companies?

6. Having found the writ petitions maintainable under issue No. 1, the learned single Judge while answering issue No. 2 in affirmative held that the

Tamil Nadu Transparency in Tenders Act, 1998 is applicable to the ""sale"" of public properties i.e., molasses by the Federation and Rule 20 of the

Tami Nadu Transparency in Tenders Rules, 2000 has not been complied with. With regard to Issue No. 3 regarding transparency and fairness in

the absence of applicability of 1998 Act, though the learned single Judge has

held that wide publication has been made by the Federation, it miserably failed to provide adequate and reasonable time for submission of tender forms. The learned single Judge proceeded further and answered Issue Nos. 4 and 5 in favour of the writ petitioners, thus, allowed the writ petitions.

7. Mr. Mani Sundargopal, learned counsel appearing for the appellant in WA. Nos. 2532 to 2536 of 2012 has attacked the impugned order

passed by the learned single Judge, raising the following contentions:-

(1) The writ petitioners being the Members of the Kallakurichi-II Sugar Mills, have no locus standi to challenge the sale price of molasses in respect of other 15 sugar mills.

(2) Even if the writ petitions filed by the petitioner belonging to Kallakurichi II Sugar Mills are maintainable, that would have been restricted to the limited extent of the price to the sale of molasses in respect of the said Sugar Mill alone and not in respect of other Sugar Mills, which have not raised any dispute with regard to fixation of rate in lifting the molasses.

(3) When the tender process was completed and an order was passed to lift the molasses, the petitioners cannot invoke the writ jurisdiction and they should have resorted to the procedure contemplated under the Co-operative Societies Act.

(4) The finding of the learned single Judge that the provisions of the Tamil Nadu Transparency in Tender Act, 1998 are applicable to the facts of the present, is bad and such a finding ought not to have been rendered in the facts of the present case.

(5) When there was no interim order of status quo restraining the appellant from lifting the molasses, the respondents ought not to have restrained the appellant from doing so and filing of the subsequent writ petitions impleading the present appellant is an afterthought and without any cause of action and therefore his writ petition seeking for a direction to lift the balance quantity of 7,070 MTs of molasses out of 20,000 MTs has to be allowed.

8. Mr. AR. L. Sundaresan, learned Senior Counsel appearing for the appellant has contended that the Tamil Nadu Transparency in Tenders Act,

1998 does not apply in the case of sale by the Government and is restricted to cases of procurement and the observation of the learned single

Judge that omission to make the Act applicable to sales is a casus omissus cannot be accepted as the said omission by the Government was a

deliberate policy decision and not merely a casus omissus. In support of such contention, he had relied on the decisions of this Hon"ble Court in S.

Selvarani Vs. The Commissioner, Karaikudi Municipality and Another, and N. Kandasamy and R. Senthamarai Vs. The Authorised Officer State

Bank of India SSI Branch and K.K. Rangasamy, . He has further stated that the entire premise in the instant case regarding fixation of upset price

by the learned single Judge is erroneous as the significance of an upset price is only that no price below it will be accepted. He has also contended

that comparing the prices between various states cannot be accepted as the molasses in Puducherry are of high quality and they are in respect of

small quantities. According to him there are no procedural errors in the tender process. He has further submitted that the contract entered into by

the appellant with the foreign customer stipulates the time as the essence and any default in adhering to the time stipulated in the contract will result

in termination of the contract, thereby the appellant would be put into financial and reputational damages. Moreover, he sought dismissal of the writ

petitions on the ground of non-joinder of necessary parties as the respective sugar mills were not made parties to the writ petitions.

9. Mr. P.S. Raman, learned Senior Counsel appearing for the appellant in WA. Nos. 2608, 2625 and 2628 of 2012 viz., M/s. Imcola Exports,

among other contentions raised in the other connected writ appeals, has mainly contended that the question of maintainability of the writ petitions

have not been gone into and no finding has been rendered by the learned single Judge in this regard. On merits it is contended by him that the

question as to what would be the adequate and reasonable time in a tender process is completely beyond the purview of the writ petition, when the

only grievance was that the price fixed was arbitrary.

10. Ms. Arulmozhi, learned counsel appearing for the party respondent/writ petitioners, by supporting the order of the learned single Judge has

contended that the various contentions now raised by the appellants have been met by the learned single Judge in the impugned order after

considering various factual aspects and, therefore, no interference is called for and the writ appeals are liable to be dismissed.

11. Mr. Arvind Pandian, learned Addl. Advocate General appearing for the State and the Director of Sugar has justified the tender process and

fixation of price made by the official respondents, thereby supporting the contentions of the appellants.

12. On the aforesaid contentions raised, the following foremost questions emerge for consideration:-

(1) Whether the writ petitions are maintainable and they can be treated as Public Interest Litigations?

(2) Whether the Tamil Nadu Transparency in Tenders Act, 1998 is applicable to the present case as held by the learned single Judge?

(3) Whether the fixation of upset price is arbitrary as contended by the writ petitioners?

13. Before dealing with the first question regarding the maintainability of the writ petitions, as the writ petitions were decided mainly on the basis of

violation of the provisions of the Tamil Nadu Transparency in Tenders Act, 1998 (in short "the Tenders Act"), it would be appropriate to deal with

the second question regarding the applicability of the Tenders Act.

Point No. 2:

14. In order to appreciate the contentions raised by the learned counsel appearing for the appellants in one voice that the Tenders Act will not

apply to the case on hand, we have gone through the pleadings and the grounds raised by the party respondent/writ petitioners in the writ

petitioners. The writ petitions were filed challenging the throw-away price fixed by the Federation without taking into consideration the prevailing

prices in the neighbouring States. The grounds raised relate only to fixation of upset price, monetary loss to be caused to the Mills and the

Government and comparison of prices in neighbouring States. In the writ petitions there is not even a whisper about the Tenders Act. Even in the

counter filed either by the Federation or by the companies, there is no whisper about the application or violation of the provisions of the Tenders

Act to the present case. However, from the impugned order it seems the learned counsel for the writ petitioners while submitting her contentions

has orally pointed out about the violation in respect of Rules 20 and 21 of the Tamil Nadu Transparency in Tenders Rules, 2000, which prescribe

certain time limit in tender process.

15. According to the learned counsel for the appellants, the Tenders Act would not apply to the present case because the statement of objects and reasons of the Act refers exclusively to "procurement" and not to "sale" and the words "'sale'" cannot be replaced with "'procurement'" wherever the latter occurs. This contention was rejected by the learned single Judge by observing as follows:-

56. Though, at three places in the above extracted portion of the Statement of Objects, the word "'procurement'" occurs, in my considered view, the aforesaid objects could apply both for "'procurement'" and "'sale'". The very purpose of the Act is to ensure transparency and fairness and to avoid arbitrariness in the State action in commercial matters. Therefore, the statute cannot be interpreted narrowly by confining only to the case of procurement'" and not in the "'sale'" of public properties.

57. It is true, as contended by the learned counsel for the companies that the Act and the Rules framed thereunder use the word "'procurement" and not "'sale'" and likewise, use the phrase "'lowest tender'" and "'lowest evaluated price'". But, by applying the principle of casus omissus, I am of the considered view that the word "'sale'" can be read into wherever the word "'procurement'" is used...

16. We are unable to appreciate the aforesaid conclusion reached by the learned single Judge on the facts of the present case. In the present case, no procurement is made and only sale of molasses is being made. As per the Law Lexicon the word "'procure'" means to acquire for one's self; to cause to come; to obtain by any means; to contrive; to bring about. The common meaning of the word "procure" is to cause or to bring about. Therefore, by no imagination the word "procurement" can be replaced by the word "'sale'". Application of the principle of casus omissus to the present case does not even arise. In Padmasundara Rao and Others Vs. State of Tamil Nadu and Others, a larger Bench of the Hon'ble Court has dealt with the applicability of casus omissus in detail in the following words:-

12. The rival pleas regarding rewriting of statute and casus omissus need careful consideration. It is well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule

of construction is that the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed, not as theorems of Euclid", Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See *Lehigh Valley Coal Co. v. Yensavage*.) The view was reiterated in *Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama*.

13. In *D. R. Venkatchalam v. Dy. Transport Commr.* it was observed that courts must avoid the danger of a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the guise of interpretation.

14. While interpreting a provision the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See *Rishabh Agro Industries Ltd. v. P.N.B. Capital Services Ltd.*) The legislative *casus omissus* cannot be supplied by judicial interpretative process...

15. Two principles of construction "one relating to *casus omissus* and the other in regard to reading the statute as a whole" appear to be well settled. Under the first principle a *casus omissus* cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a *casus omissus* should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J., in *Artemiou v. Procopiou* (at All ER p. 544-I), "is not to be imputed to a statute if there is some other construction available". Where to apply words

literally would ""defeat the obvious intention of the legislation and produce a wholly unreasonable result"", we must do some violence to the words"" and so achieve that obvious intention and produce a rational construction. [Per Lord Reid in *Luke v. IRC*. where at AC p. 577 he also observed: (All ER p. 664-I)"" This is not a new problem, though our standard of drafting is such that it rarely emerges.""]
(emphasis added)

17. In the present case, there is no need for the learned single Judge to replace the word "procurement" with "sale" as the Act or the section does not construe with reference to sale. When the Legislature thought it fit to omit the word ""sale"". The decision relied on by the learned single Judge reported in *Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others*, holding that the word ""Arbitrator"" can be replaced with ""Tribunal"" stands on a different footing and it is not applicable to the facts of the present case, since there is no ambiguity in the Act so as to apply the Principles of *casus omissus*.

18. Therefore, from the decision of the Supreme Court and the literal meaning of the word ""procurement"" with ""sale"" and the Statement of Objects and Reasons of the Tenders Act and in view of the above discussion, the inevitable conclusion is that the Tamil Nadu Transparency in Tenders Act, 1998 is not applicable to the case on hand. When the Act is unambiguously to deal only with the cases of procurement and nowhere it has been indicated that it should be applied even to the cases of "sale", it would be improper to apply the provisions of the Act to the cases of "sale" also.

19. It seems, the learned single Judge persuaded by the fact that there should be a minimum time prescribed for tenders as contemplated under Rule 20 of the Tamil Nadu Transparency in Tenders Rules has come to a conclusion that the Tenders Act is applicable to the present Act. This aspect can also be viewed from another angle. In order to sell the molasses, an expert committee has been formed and the committee prescribes the period and the Special Officer accordingly invites tender. It is not in dispute that for the earlier periods i.e., in 2010 and 2011 the period from the date of tender and the submission is only eight days. Even the learned single Judge in para 91 of the impugned order has commented that the

advertisement was made on 13.9.2011 for open auction-cum-tender and the auction had taken place on 22.9.2011, within a period of nine days

as has been done in the present case. Therefore, when there is no dispute to the fact that wide publication has been given, which is not disputed by

the parties and which has been even accepted by the learned single Judge in the impugned order, the minimum period prescribed under Rule 20

learned single Judge ought not to have the minimum period to be ought not to have been given more importance. Moreover, in the absence of any

pleading on this score, considering the earlier tender process, which are not in dispute, we are not inclined to accept the finding of the learned

single Judge in this regard. The second question is therefore answered in favour of the appellants.

Point No. 3

20. The next question relates to fixation of sale price of molasses. The main grievance of the writ petitioners is that the upset price fixed for the sale

of molasses by the Federation and the Molasses Sales Committee is arbitrary and not in consonance with the rate prevailing in the neighbouring

States. According to them, the respondent authorities indulged in selling molasses at a throw-away price from 2011 onwards, thereby causing huge

loss to the co-operative and public sector sugar mills. It is the case of the appellants that the price of the molasses is not as high as in Puducherry

and Andhra Pradesh and there cannot be a simplistic comparison between various states without taking into consideration different factors which

determine the price. They have relied upon various orders procured from the neighbouring States in support of their contentions.

21. It is not in dispute that the molasses are being sold for export by the Federation right from 2006. It is to be noted that there was ban by the

Government for the sale of molasses during the years 2009 and 2010 and during that period there was no sale of molasses. The Federation has

given details regarding the rate and quantity of molasses sold from 2006 to 2011, which are as follows:-

S. No. Year Molasses sold for Price Range (Rs.

export (MTs) /MT)

1 2006 80383 750-1750

2 2007 199000 306-750

3 2008 105000 1396-3395

4 2009 NIL --

5 2010 NIL --

6 2011 100000 1375-1550

(For the year 2012, one lakh MTs Molasses was sold for export @ Rs. 1,410/MT)

22. A comparison of the aforesaid price of molasses between the period 2006 to 2011 would show that the price was ranging in between Rs.

306/- to Rs. 3395/-. It is significant to note that in 2007 while about 2 lakh MTs of molasses was sold for export the upset price was Rs. 306 per

MT and no doubt it has gone upto Rs. 750/-. In 2008, the molasses fetched a higher rate of Rs. 3,395/-. Therefore, one cannot determine the

actual rate of molasses for that year. When the quantity sold was higher in 2007, the price was very low. On the other hand, when the quantity was

lower in 2006, the price went upto Rs. 1750/- and in 2008 even though the quantity is much less than that of 2007, it fetched a higher rate of Rs.

3,395/-. From the break-up particulars given by the Federation for the year 2011 would show that the highest rate quoted in the sealed tender bid

was Rs. 1,700/- and the lesser rate was Rs. 1,040/-. It is the stand of the Federation that the average of H-1 rates on five occasions in 2011 i.e.

Rs. 1375/- was fixed as the upset price for the year 2012. This price fixation was very much commented by the learned single Judge. For coming

to such a conclusion, the learned single Judge has relied on the documents produced by the appellants themselves. The relevant paragraphs dealt

with by the learned single Judge to come to such a conclusion are as follows:-

101. Even from the typed set of papers that is filed by Suraj, it is seen that the price of molasses for local sales is very much less than the price of

molasses meant for export purpose. As per the comparative statement of export price and local price furnished by Suraj in the typed set of papers,

during 2006-2007, the export price ranged from Rs. 1,250/- per MT to Rs. 1,650/- per MT and the local price ranged from Rs. 200/- per MT to

Rs. 350/- per MT.

102. Likewise, as per the comparative statement for the year 2007-2008 furnished by Suraj in the typed set of papers, the export price ranged

from Rs. 334/- per MT to Rs. 720/- per MT for the sale of Rs. 1,05,000/- MTS of

molasses from cooperative and public sector sugar mills and 70,000 MTs of molasses were sold for the price ranging from Rs. 420/- per MT to Rs. 800/- per MT But, the rate in the domestic market ranged from Rs. 175/- per MT to Rs. 275/- per MT.

103. But, for the period 2011-2012, the price of molasses in the domestic market was ranging from Rs. 1,550/- per MT to Rs. 2,400/- per MT,

as per the comparative statement furnished by Suraj in the typed set of papers. But, the molasses of the cooperative society and public sector

sugar mills were sold at a price range of Rs. 1,375/- per MT to Rs. 1,550/- per MT. It is stated in the comparative statement submitted by Suraj

which is found at Page No. 38 of the typed set of papers that the offer ranging from Rs. 1,550/- per MT to Rs. 2,400/- per MT for local market

was rejected by the Tamil Nadu Sugar Federation. Such an action is surprising.

23. A careful reading of the aforesaid observation made by the single Judge regarding fixation of price would show that such a conclusion was

arrived at on the basis of the documents furnished by the appellants themselves, whose stand was that the standard of molasses and administrative

charges in the neighbouring states are different. The documents filed by the said appellant Suraj to establish that the rate of molasses supplied by

the companies like E.I.D. Parry, Madras Sugars Limited, Dharani Sugars & Chemicals Limited were below Rs. 900/- per MT were not

considered by the learned single Judge. In such circumstances, on the available documents, one cannot come to a definite conclusion that the rate

fixed for the sale of molasses is very meagre. To determine such a difference, one has to go into various aspects such as nature & standard of the

molasses in the State and the neighbouring States, administrative charges prevailing in the neighbouring States, technical expertise, etc. It seems the

learned single Judge has not gone into the aspect of the standard of molasses. To speak about the standard of Molasses, the competent authority

would be the official respondents. Their stand in the counter is as follows:-

10 ... the state of Karnataka, Andhra Pradesh and Maharashtra are selling molasses based on the supply and demand positions of the respective

States. Further, the molasses quality is measured by Total Reduction in Sugar (TRS) value. If the TRS value is higher, the molasses will fetch higher

price. In Co-operative & Public Sector Sugar Mills the TRS value ranges from

43% to 47% which shows better sugar production efficiency

whereas in Puducherry Co-op. Sugar Mills, the TRS value is 53% and more. Depending upon quality of molasses, the molasses price varies.

24. The aforesaid aspect has not been appreciated by the learned single Judge in the impugned order. The conclusion of the learned single Judge

treating the molasses of the neighbouring States with the State of Tamil Nadu as one and the same is without any basis or supported by any

documents. Moreover, the learned single Judge has not called for any opinion from the technical experts holding the field before coming to such a conclusion.

25. The aforesaid conclusion is also strengthened by the facts to be dealt with hereunder. It is not in dispute that 16 co-operative and public sector

sugar mills in Tamil Nadu are concerned with the case and they are under the control of the Director of Sugar and the Tamil Nadu Co-operative

Sugar Federation Limited. Out of such 16 sugar mills, the present dispute was raised by three shareholders of one of the sugar mills, viz.,

Kallakurichi-II Co-operative Sugar Mills Ltd., as a Public Interest Litigation. By letter dated 20.3.2012, 30.3.2012 and 25.04.2012, the Director

of Sugar requested the Government to grant permission for export of 1 lakh MTs of molasses and the Government by its letter dated 15.6.2012,

accorded prior approval. Thereafter, the Special Officer of the Federation issued open auction-cum-tender notice dated 06.06.2012 for sale of 1

lakh MTs of molasses and the same was published on 07.06.2012 in the newspapers and websites. The last date for issuance of forms was fixed

as 14.06.2012 and the last date for submission was on 15.06.2012 before 11.00 A.M. and the opening of Part-I tender was at 11.30 A.M. on

the same day. The Molasses Sales Committee met on 18.06.2012 at 11.30 A.M. to open the tenders and after opening it was found that the

appellants were eligible for opening Part-II tender. As the three appellants have offered the bid of Rs. 1390/- per MT for all the sugar mills, after a

discussion and negotiation, the rate was finally fixed at Rs. 1410/- per MT of molasses and by order dated 06.07.2012, the Special Office allotted

60,000 MTs to M/s. Suraj Agimpex House, 20,000 MTs to M/s. Imcola (Exports) Ltd., Chennai and 20,000 MTs to M/s. Integrated Service

Point Pvt. Ltd., Chennai. 15 other sugar mills have not raised any dispute with

regard to fixation of the price. It is to be noted that there are two separate units at Kallakurichi viz., Kallakurichi I and Kallakurichi II. The writ petitions were filed by the shareholders of Kallakurichi II Co-operative Sugar Mills and not by the other one. Even the other co-operative sugar mills were not heard in the matter and neither the writ petitioners nor the appellants taken any steps to bring on record the other sugar mills. In this context, the contention of the appellants that the writ petitions are not maintainable on the ground of non-joinder of necessary parties cannot be slightly brushed aside. However, the fact remains that the learned single Judge before coming to a conclusion that the price fixed by the Federation and the Committee was arbitrary had not heard the other co-operative sugar mills from which the molasses have to be lifted. In the absence of any grievance from any other sugar mills and the issue had only been raised by the shareholders, who are not even experts in the field, we do not know as to how the learned single Judge came to a conclusion that the rate fixed for sale of molasses was a throw-away price. Moreover, it is well settled law that in commercial transactions adequacy of consideration cannot form subject matter of adjudication in a Court of Law, unless the price consideration is illusory and unconscionable. For all these reasons, we are not agreeable with the conclusion arrived at by the learned single Judge that the sale price fixed for molasses was very meagre and it was a throw-away price.

Point No. 1

26. Though initially we hesitated to deal with the question regarding maintainability of the writ petitions as the writ appeals are liable to be allowed on the aforesaid grounds and merit, we would like to place our opinion on record even with respect to this issue.

27. In W.P. Nos. 25116, 25212 and 25250 of 2012, the relief sought for is one and the same, which is as follows:-

...seeking a writ of certiorarified mandamus calling for the records pertaining to the impugned order issued by the second respondent, viz., open auction cum tender notice for sale of molasses dated 06.06.2012 and quash the same as illegal and further direct the respondents 1 and 2 to fix the sale price for molasses to be sold from Tamil Nadu Co-operative Sugar Mills on par with the sale price fixed by the neighbouring states of Tamil

Nadu.

28. The aforesaid three writ petitions were filed to quash the Open Auction-cum-Tender Notice dated 6.6.2012 and not the subsequent sale order

under which the appellants were permitted to lift the molasses. When the sale order has been passed permitting the appellants to lift the molasses,

nothing remains in the tender notification to quash. When the tenderers have been finalised and the orders have been subsequently passed,

challenging of the tender notification is nothing but an empty formality and nothing would happen even if the tender notification is quashed. It is not

as if the sale order was not passed at the time of filing of the said writ petitions. Those writ petitions were filed in September, 2012, whereas the

sale order was passed as early as in July, 2012. Therefore, prima facie we are of the view that those writ petitions challenging the tender

notification ought not to have been entertained by the learned single Judge and they should have been rejected at the threshold.

29. W.P. Nos. 23393 and 24821 of 2012 have been filed to quash the sale order dated 06.07.2012 and to conduct a fresh auction. In these writ

petitions, under the sale order which was sought to be quashed by the writ petitioners therein, M/s. Suraj Agimpex House was permitted to lift

60,000 MTs of molasses and, therefore, the said company alone was made as a party respondent and not the other two companies got the order

to lift the molasses. At the risk of repetition it is stated that in the earlier three writ petitions tender notification which was not in existence at the time

of filing of the writ petitions was challenged and in the other two writ petitions only the sale order relating to one company has been challenged.

Even in the writ petitions challenging the sale order it has been averred as follows:-

14. The petitioner submits that even though as per the impugned order 60,000 M.T. Molasses have been sold in the public auction the remaining

40,000 M.T. has been sold to the other two companies Viz. 1) Integrated Service Paint Pvt. Ltd., 2) M/s. IMCOLA Exports, and the

confirmation order for the two companies are not in possession of the petitioner hence she is not in position to challenge those two orders and the

petitioner reserves her right to challenge the said two orders as and when it is made available in her hands.

30. From the above, it is apparent that the sale order relating to M/s. Suraj Agimpex House alone is under challenge and the sale order in respect of other two companies, viz., Integrated Service Point Pvt. Ltd., and IMCOLA Exports are not under challenge. When there was no challenge in respect of the sale order in respect of the latter two companies, we are surprised as to how the learned single Judge could have set aside the entire sale of molasses. The other peculiar aspect to be noted is that even where the sale order of M/s. Integrated Service Point Pvt. Ltd., was not under challenge and was not even connected with the writ petitioners Sugar Mill and when there was no interim stay against such company from lifting the balance molasses, the said company was not allowed to lift the balance molasses and was constrained to approach the Court by way of separate writ petition.

31. Once the tender notification has resulted in sale order and the said order has been given effect to by allowing the appellants to lift the molasses from the Mills, the writ petitioners ought not to have invoked the writ jurisdiction and should have taken proper recourse under appropriate provisions of law before appropriate forum. From the materials placed on record it is seen that out of 20000 MTs allotted to Integrated Service Point, only 7,070 MTs of molasses has to be lifted, out of 60,000 MTs allotted to Suraj Agimpex House, 26,212 MTs of molasses had been lifted and 7,759 MTs out of 20,000 MTs allotted to Imcola Exports was lifted. In other words, about 30% of the molasses have been lifted by the appellants. After finalisation of the tender and one third of the molasses was lifted, the learned single Judge ought not to have entertained the writ petitions, instead they should have been directed to approach the Civil Court.

32. An allied contention has been raised with regard to filing of the writ petition styling as Public Interest Litigation. As contended by the appellants, the writ petitions were not filed by the Sugar Mills themselves and they have been filed by the shareholders of one of 16 Sugar Mills. If the shareholders are aggrieved by any of the actions of the said Sugar Mill, they can only seek relief as against the said sugar mill as shareholders of the said sugar mill and not against any other sugar mill. Moreover, if they are aggrieved at the rate fixed by the Federation or the Committee, they can seek the relief only against the said Federation or the Committee and not against

the appellants. The writ petitioners have not filed the writ petitions in the interest of other sugar mills and that is also not the case of the writ petitioners in their respective writ petitions. They have only stated that there was arbitrariness in fixing the sale prices for Molasses to be exported which has resulted in huge loss to exchequer and to the members of the Co-operative Societies Sugar Mills. In those circumstances, we have every doubt in our mind that whether these writ petitions could be entertained and treated as Public Interest Litigation. Anyhow, as we have already find that the writ appeals are liable to be allowed on merits as well as on the ground of maintainability, we are not expressing any opinion in this regard. For the reasons stated above, the writ appeals are allowed and the appellants are permitted to lift the balance of molasses as stated in the preceding paragraphs of this judgment. The object of this open auction-cum-tender is to clear the molasses stock so as to repair the molasses tank and keep it ready for the ensuing crushing. This very object of the tender was defeated by the writ petitioners by initiating the present litigations as in the meantime the potency, TRS and Brix value, which will result in poor sale value of the molasses, would have come down. Having regard to the aforesaid facts and the heavy loss sustained by the appellants in the meantime in view of the filing of these writ petitions at the instance of a particular mill, we are inclined to impose hefty costs on the writ petitioners. However, considering the fact that the writ petitioners are only the shareholders of a Mill and not the companies, we constrain ourselves to impose costs of Rs. 12,000/- (Rupees twelve thousand only) to be paid by each of the writ petitioner to the appellants, which shall be equally shared by the three appellant companies. The interim order of status quo is vacated. Consequently, the connected Miscellaneous Petitions are closed.