

(2002) 09 DEL CK 0178

In the Delhi High Court

Case No : C.W.P. No's. 1956 and 1957 of 1983

Sharda Sugar and Industries Ltd. and Another and Hindustan Sugar Mills Ltd. and Another APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 21-09-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Essential Commodities Act, 1955 — Section 3(2), 3(3), 3(3A), 3(3C)

Citation : (2002) 09 DEL CK 0178

Hon'ble Judges : S.B. Sinha, C.J;A.K. Sikri, J

Bench : Division Bench

Advocate : Ravinder Sethi and Arvind Minocha, for the Appellant; Monika Arora, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—The sole question, which arises for consideration in these writ petitions, is as to whether the respondents committed an illegality in fixing the price of levy sugar for the years 1982-83 in accordance with the principles laid down in Section 3(3C) of the Essential Commodities Act, 1955 (hereinafter for the sake of brevity referred to as, "the said Act").

2. The petitioners carry on business of manufacture and sale of sugar in the State of Uttar Pradesh. Sugar indisputably is an essential commodity under the said Act and the production, supply, distribution and price thereof have been subject to statutory control orders issued by the Central Government from time to time.

With a view to introduce price control, the Central Government also set up Tariff Commission to examine the cost structure of sugar and fair price which could be paid to the sugar industry form time to time whereby and whereunder the cost schedules, on the basis of zones having regard to their respective duration and recovery percentage on which fair price could be fixe, were worked out.

3. The Central Government, however, in the year 1967 introduced partial control over sugar whereby and whereunder 60 per cent of the output was requisitioned and the balance 40 per cent was left for free sale. To implement the said policy of partial control over sugar, Section 3(3C) was introduced in the said Act with a view to provide incentives to maximize sugar production and increase the competitiveness of the sugar factories vis-a-vis khandsari and gur manufacturing in securing sugarcane.

4. The aforementioned Section 3(3C) of the said Act reads thus:-

"3. Power to control production, supply, distribution, etc, of essential commodities-

... ..

(3C) Where any producer is required by an order made with reference to Clause (f) of Sub-section (2) to sell any kind of sugar (whether to the Central Government or a State Government or to an officer or agent of such Government or to any other person or class of persons) and either no notification in respect of such sugar has been issued under Sub-section (3A) or any such notification, having been issued, has ceased to remain in force by efflux of time, then, notwithstanding anything contained in Sub-section (3), there shall be paid to that producer an amount Therefore which shall be calculated with reference to such price of sugar as the Central Government may, by order, determine, having regard to-

(a) the minimum price, if any fixed for sugarcane by the Central Government under this section;

(b) the manufacturing cost of sugar;

(c) the duty or tax, if any, paid or payable thereon and

(d) the securing of a reasonable return on the capital employed in the business of manufacturing sugar,

and different, price may be determined from time to time for different areas or for different factories or for different kinds of sugar.

Explanation. --For the purposes of this sub-section, "Producer" means a person carrying on the business of manufacturing sugar.]"

5. In terms of the provisions of the Sugar (Control) Order, 1966, the Central Government had all along been following a policy of total or partial control over the sugar industry. In terms of the said Order, factories producing sugar are required to make compulsory sale of certain quantity of sugar at a price specified Therefore, which is known as levy sugar, whereas they are entitled to sell the rest thereof in free market.

However, an Order known as Sugar (Price Determination for 1982-83 Production) Order, 1983 was made in terms of the said Act on 27.01.1983.

6. A contention was raised as to whether in determining the value of the levy sugar the Central Government would be bound to take into consideration the price of sugar to be paid to the sugarcane growers. According to the petitioners, they were required to pay a higher price to the sugarcane growers in Uttar Pradesh.

7. Mr. Sethi, the learned senior counsel appearing on behalf of the petitioners, would submit that although such a contention had been raised by the petitioners in the writ petition, the same had not been traversed by the respondents, as no counter affidavit in these cases have been filed.

The learned counsel would contend that having regard to the decision of the Apex Court in *Shri Malaprabha Co-op. Sugar Factory Ltd. Vs. Union of India and Another*, and *Shri Malaprabha Coop. Sugar Factory Ltd. Vs. Union of India (UOI) and Another*, , it must be held that the prices of sugar fixed under the said Order cannot apply to the petitioners inasmuch as they are, having regard to the fact that they had to pay a much higher price to the sugarcane growers and, thus, they are entitled to a higher price.

8. Ms. Arora, the learned counsel appearing on behalf of the respondents, on the other hand, would contend that the matter stands covered by the decisions of the Apex Court in AIR 2000 3499 (SC) ; *Modi Industries Ltd. and Anr. v. Union of India and Ors.* (1999) 9 SCC 245; and *Bharat Sugar Mills Ltd. and Anr. v. Union of India and Ors.* (1999) 9 SCC 246.

9. Fixation of price of an essential commodity in terms of a statutory order is essentially a legislative function. The High Court in exercise of its jurisdiction under Article 226 of the Constitution of India can interfere with the matter only in the event it comes to the conclusion that one or the other pre-conditions Therefore had not been fulfilled .

10. In *Shri Malaprabha Coop. Sugar Factory Ltd.*'s case (Supra 1) , the Apex Court held:-

"108. We are unable to agree with the submissions advanced on behalf of the Government that Clause 5-A deals only with the amount payable to the cane grower and that it cannot have any relevance for determination of levy sugar. If the determination of minimum price of sugar and fixation of the price of levy sugar under quantity of sugar to be supplied by the producer are inter connected, then they must be read as a whole and not separately as though each is distinct. While fixing the price of levy sugar regard is had only to the minimum cane price as spoken to u/s 3(3-C)(a). This minimum cane price is referable to Clause (3) of Sugar-cane (Control) Order. The additional price payable to the cane grower under Clause 5-A will arise after the expiry of the sugar year. Sugar price will have to be fixed only from the extra realization made by the producer by the sale of sugar in free market which will naturally be more than the levy price."

However, we may notice despite the aforementioned finding, the Apex Court observed:-

"110. Though normally we would have quashed the notifications but mere quashing of the notifications would lead to nebulous situation during the interregnum till the refixation of price we are obliged to give the above direction. In this connection we may usefully quote the following passage occurring at page 294 of Judicial Remedies in Public Law by Clive Lewis:

"The courts now recognize that the impact on the administration is relevant in the exercise of their remedial jurisdiction. Quashing decisions may impose heavy administrative burdens on the administration, divert resources towards reopening decisions, and lead to increased and unbudgeted expenditure. Earlier cases took the robust line that the law had to be observed, and the decision invalidated whatever the administrative inconvenience caused. The courts nowadays recognize that such an approach is not always appropriate and may not be in the wider public interest. The effect on the administrative process is relevant to the courts" remedial discretion and may prove decisive."

111. We may also add that the interest of the appellants will have to be measured against the needs of good administration which include: the need for speedy finality in decision making, the public interest, the purpose of administrative process and the need to consider substance not form."

The aforesaid decision has been taken with consideration by the Apex Court in Shri Malaprabha Coop. Sugar Factory Ltd.'s case (Supra 2) , wherein it was observed:-

"11. All these contentions except the last one were raised by the respondents earlier while the above batch of matters, the review applications and the applications for clarification were heard by this Court. All those contentions have been rejected and, Therefore, it is really to open to the respondents to raise them again. It appears to us that the respondents, like an ordinary litigant, are trying to find excuses for not complying with the judgment of this Court merely because it is not palatable to them. The direction given by this Court in para 109 of the judgment is quite clear and does not lend itself to two interpretations or any confusion as contended by the respondents. In unambiguous terms this Court has directed the Government of India to take into account the liability of the manufacturer under Clause 5-A of the 1966 Order as regards cane price and refix the price of levy sugar. Obviously, the price of levy sugar has to be fixed having regard to the factors mentioned in Section 3(3-C) of the Act and, Therefore, this Court while giving the aforesaid direction also directed them to refix the price of levy sugar having regard to those factors also. The doubt or confusion, if any, appears to us to be the result of unwillingness of the Government to give up its views and accept and implement the decision of this Court.

12. The observation, in para 104 of the judgment that the amount which the

producer of sugar is entitled to retain cannot be taken into consideration for determination of the price of levy sugar, was made in the context of mopping up of the extra realization. The issue was whether the entire extra realization or only 50% thereof could be mopped up, the view of the new pricing policy contained in Clause 5-A, for depressing the levy price. Since by the new pricing policy a benefit was sought to be conferred on the producer of sugar by making him entitled to retain 50% of the extra realization, this Court held that the said amount cannot be taken into consideration for determination of the price of levy sugar. That was entirely a different aspect. The observation which is made is para 109 and the direction given therein is with respect to the aspect of sugar producer's liability to pay additional sugarcane price. Clause 5-A being interconnected with Section 3(3-C), this new liability would certainly get projected into Factors "A" and "B" of Section 3(3-C). As earlier pointed out mopping up of extra realization is an element of Factor "D" of Section 3(3-C). Thus the contentions raised on behalf of the respondents even otherwise also do not deserve to be accepted.

13. The order that was passed by this Court on 20-2-1996 in transferred Case (Civil) No. 9 of 1990 was in respect of levy sugar price for the year 1982-83 and, Therefore, it cannot have any bearing on the fixation of price of levy sugar for the years 1975-76 to 1979-80. Moreover, this Court, while passing the said order, has clearly stated that "...this matter is not covered by the decision of this Court in Shri Malaprabha Co-op. Sugar Factory Ltd. Vs. Union of India and Another, . Even if the Government has omitted to take into consideration one unfavorable element, namely, mopping up of excess realization it cannot justify its omission, to make into consideration another relevant element with is favorable to the producer of sugar."

11. It may be true that in the instant case the respondent have not filed any counter affidavit, but while determining a matter of this nature, the Court may take judicial notice of the fact that such an affidavit had been filed in other matters. It appears from the decisions of the Apex Court in Modi Industries Ltd.'s case (Supra) that such an affidavit had been filed, wherein it has been held:-

"1. In compliance with our order dated 30.1.1996, an additional affidavit on behalf of the Union of India has been filed by Shri Deepak Khandekar, Deputy Secretary to the Government of India. In the additional affidavit, it has been expressly stated that while determining the minimum cane price of levy sugar regard has been had only to the minimum cane price as spoken to in Section 3(3-C)(a) of the Essential Commodities Act, 1955 and the additional cane price payable under Clause 5-A of the Sugar (Control) Order, 1966, has not been taken into account, and that also there has been no mopping up of excess realization of levy-free sale sugar while fixing the price of levy sugar for the season 1982-83.

2. In view of the above further statement made in the additional affidavit filed on behalf of the Union of India, we are satisfied that this matter is not covered by

the decision of this Court in Shri Malaprabha Co-op. Sugar Factory Ltd. Vs. Union of India and Another, . Accordingly, the transferred case is dismissed. No costs."

12. Yet again in Bharat Sugar Mills Ltd.'s case (Supra) , the Apex Court in no uncertain terms stated the law thus:-

"1. All these cases deal with determining the minimum price of levy sugar for the year 1982-83 in the zones of Central U.P. and North Bihar. We have seen the additional affidavit dated 11.6.1998 filed by Shri Surendra Kumar, Joint Secretary, Government of India setting out the manner in which minimum price for levy sugar for 1982-83 had been determined. The very same determination of minimum price of levy sugar for the year 1982-83 was under challenge in Modi Industries Ltd. v. Union of India (A Bench of three Judges of this Court by their order dated 20-2-1996 after noting that the minimum cane price had been fixed for the year 1982-83 u/s 3(3-C)(a) of the Essential Commodities Act has also noticed that the additional cane price payable under Clause 5-A of the Sugar (Control) Order, 1996 had not been taken into account nor was there any mopping up of excess realization on free sale sugar while fixing the price of levy sugar for the year 1982-83. This Court has held that the matter was not covered by the decision of this Court in Shri Malaprabha Coop. Sugar Factory Ltd. v. Union of India and had dismissed the transferred case. Our attention has been drawn to Shri Malaprabha Coop. Sugar Factory Ltd. v. Union of India. In para 13 of that decision this Court has expressly noted the decision in Transferred Case No. 9 of 1990 (supra) and has held that the first Shri Malaprabha case did not affect the Transferred Case (Civil) No. 9 of 1990. The decision in Transferred Case (Civil) No. 9 of 1990 is directly applicable to the present set of transferred cases which also deal with the same price fixed for the season 1982-83. In view thereof, these transferred cases are also dismissed.

2. The respondents apply for extension of time for fixing the price of sugar under our order of 21-4-1998 pertaining to TCs (Civil) Nos. 18-20, 23-28, 30, 32-36 and 38-39 of 1993. The time is extended by six weeks from today."

13. The aforesaid decisions of Modi Industries Ltd.'s case (Supra) and Bharat Sugar Mills Ltd.'s case (Supra) had been noticed by the Apex Court in Triveni Engg. Works Ltd.'s case (Supra) , wherein it has been held:-

"6. In view of the above, since in this case also it is the price for the year 1982-83 which is involved, as also in view of the further (sic) that the price fixation has already been upheld in the three decisions of this Court, we are not prepared to accept the contention of the learned counsel for the respondents that the fixation of minimum price for levy sugar for the year 1982-83 was not correctly fixed."

14. In view of the aforementioned decisions wherein the Apex Court satisfied itself that its directions in Shri Malaprabha Coop. Sugar Factory Ltd.'s case (Supra 1) had been complied with, we are of the opinion that there is no merit in these writ petitions, which are dismissed accordingly. However in the facts and

circumstances of the cases, there shall be no order as to costs.