

(2009) 02 KAR CK 0065

In the Karnataka High Court

Case No : Writ Petition No's. 6385 and 6809 of 2008

South Indian Sugar Mills Association and Sri Prabhulingesh
Sugars and Chemicals Limited

APPELLANT

Vs

The Union of India (UOI), Ministry of Consumer Affairs, Food
and Public Distribution, Department of Food and Public
Distribution, The State of Karnataka and The Commissioner
for Cane Development and Director of Sugar
 Sri
Chamundeswari Sugars Ltd. Vs The State of Karnataka and
The Commissioner for Cane Development and Director of
Sugar

RESPONDENT

Date of Decision : 13-02-2009

Acts Referred:

Constitution of India, 1950 — Article 162, 246, 254
Essential Commodities Act, 1955 — Section 2 (a), 2 (b), 3 (1), 3 (2)

Citation : (2009) ILR (Kar) 2216 : (2009) 5 KarLJ 302 : (2010) 8 RCR(Civil) 300

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : Jayakumar S. Patil for Jayakumar S., Patil Associates in Writ Petition No. 6385 of 2008 and G.V. Shantharaju for Kesvy and Co. in Writ Petition No. 6809 of 2008, for the Appellant; Venkatesh Doddi, CGC for R1 in Writ Petition No. 6385 of 2008, Narendra Prasad, GA for R2 and R3 in Writ Petition No. 6385 of 2008 and Narendra Prasad, GP in Writ Petition No. 6809 of 2008, for the Respondent

Final Decision : Allowed

Judgement

N. Kumar, J.—The petitioners in these two Writ Petitions have challenged the order of the Government of Karnataka dated 31.3.2008 where the Commissioner for Cane Development and Director of Sugar in Karnataka has requested all the Deputy Commissioners to ensure that the additional sugar cane price of Rs. 160/- per Metric Ton in addition to the Statutory Minimum Price determined by the Government of India is to be paid to the farmers for the cane crushed during the year 2007-08.

2. The Central Government has fixed the Statutory Minimum Price (SMP) of sugarcane payable by sugar factories for 2007-08 sugar season at Rs. 81.18 per quintal linked to a basic recovery of 9% subject to a premium of Rs. 0.90 for every 0.1% point increase in the recovery above that level. In so far as the Karnataka State is concerned the minimum sugarcane price depending upon recovery percentage it works out to Rs. 105.48 to 81.18 depending upon the place. After the announcement of the said Statutory Minimum Price there was a meeting between the Association and the Government. In the meeting it was agreed if the Government were to exempt the mills from payment of purchase tax from 1.4.2008 to 31.7.2008 they would be agreeable to pay a sum of Rs. 60/- per Ton of the cane crushed in excess of the Statutory Minimum Price. It is not in dispute accordingly the sugar mills in Karnataka have paid Rs. 60/- more than the Statutory Minimum Price fixed by the Central Government to the farmers. Thereafter the State Government took note of the concession given to the sugar producers for the period 2007-08 which are as under:

Additional Exemption of Purchase Tax from 1.4.2008 to 31.7.2008.

Rs. 100/- subsidy for the crushing of sugarcane from 1.4.2008 to 31.7.2008.

Transport subsidy @ Rs. 2/- per Km per M.T beyond 30 Kms.

Export Subsidy of Rs. 1000 per M.T of the sugar exported from, the date of issue of G.O till the period of Government of India's Export concession order.

Liberalisation of movement of molasses and

Release of Rs. 100 subsidy for the period from 1.6.2007 to 31.7.2007.

They also took note of certain concessions given by the Government of India like interest free loan equivalent to the Excise Duty payable for the year 2006-07 and 2007-08, Export Subsidy, Buffer Stock subsidy, etc. Thereafter, they took note of the fact that the Tamilnadu Government by their order dated 26.11.2007 have determined the cane price at Rs. 1,034/- per ton for recovery of 9% with an additional increase of Rs. 9 per M.T for every increase of 0.1% of recovery above the average recovery of 9%. The Government of Andhra Pradesh has passed on the Purchase Tax to the farmers. In view of the upward trend noticed in the prices of molasses and sugar it is all the more essential to ensure prompt payment to farmers. It is in this background the impugned letter is addressed by the Commissioner for Cane Development and Director of Sugar in Karnataka to all the Deputy Commissioners to ensure that the additional sugarcane price of Rs. 160/- per M.T in addition to the SMP determined by Government of India is to be paid to the farmers for the cane crushed during the year 2007-08 sugar season. When the said request of the Commissioner was sought to be enforced by the respective Deputy Commissioners, petitioners are constrained to approach this Court.

3. The State has filed a detailed counter justifying their action. It is their specific case that, in view of the provisions of Article 162 read with Entry 33 in List-III of

the Seventh Schedule of Constitution of India which confers power on the State Government to fix price by an executive order, the State has the right to fix the price of the sugar cane. In view of the provisions of Sub-section (1) of Clause 3 of the 1966 order, the Central Government can fix only the minimum price of sugarcane and the same should be read also with the Sub-clause (2) of Clause 3 of the order, which creates an embargo or prohibition that no person shall sell or agree to sell sugarcane to a producer of sugar and no such producer shall purchase or agree to purchase sugarcane at a price lower than that fixed under Sub-clause (1). It is submitted that the inconsistency or repugnancy will arise if the State Government fixes a price which is lower than that fixed by the Central Government and if the price fixed by the State Government is higher than the price fixed by the Central Government there will be no occasion for any inconsistency or repugnancy as it is possible for both the orders to operate simultaneously and to comply with both of them. A higher price fixed by the State Government would automatically comply with the provisions of Sub-clause (2) of Clause 3 of the 1966 order. Therefore, any price fixed by the State Government which is higher than that fixed by the Central Government cannot lead to any kind of repugnancy. It is submitted that so far as the power of the Central Government under Clause 3(1), it can fix only a minimum price of sugarcane to be paid by the producers of sugar for the sugarcane purchased by them. That is the lowest permissible rate. The effect, of Clause 3(2) of the Sugarcane (Control) Order is that a producer of sugarcane under no circumstances purchase sugarcane at a price lower than the minimum price fixed under Clause 3(1) and there is a similar prohibition on the cane grower and he cannot sell or agree to sell sugarcane to a producer of a sugar below the said price. The Central Government, does not take into consideration the various by-products like molasses, bagasse and press mud which are produced during the course of production of sugar. The sugar mill make considerable amount of money from the sale of aforesaid by-products especially since molasses has been de-controlled after 1991. It is submitted that the petitioner is having co-generation and Distillery. The State Government having regard to the local conditions and also the amount earned by the sugar factories from the aforesaid by-products, fixes the price of the sugarcane which is more realistic, Certain items like molasses, bagasse and press mud which are by-products of sugar industries and which contribute to the earnings of the sugar mills have not been taken into consideration by the Central Government, Therefore, the State Government taking into consideration all the relevant factors and local conditions fixed the correct price in the impugned order. The same is in accordance with law and therefore, there is no merit in these petitions.

4. Sri Jayakumar S. Patil and Sri G.V. Shantharaju, the learned senior counsel's appearing for the petitioners contended that, under the provisions of the Sugar Control Order, 1966 it is the Central Government which has been vested with the power to fix the minimum price of sugar cane payable by producers of sugar. The said order also provides for fixation of sugar price by agreement between the

parries which has to be higher than the minimum price. No person shall sell or agree to sell or shall purchase or agree to purchase sugar cane at a price lower than that fixed under Sub-clause (1) of Rule 3 of the Order. Clause 5A provides for additional price of sugar cane which is again to be fixed by the Central Government. Under the scheme of this Order there is absolutely no role for the State Government to fix the price of sugar. Realising this, the State Government has resorted to this ingenious way of addressing a letter by the Director of Sugar and Cane Commission to the Deputy Commissioner of each districts to ensure prompt payment of Rs. 160/- per Metric Ton to the farmers. It is a strong arm method which the State Government is adopting to extract higher price from the sugar producer which is illegal and without the authority of law and liable to be quashed.

5. Per contra, the learned Government Advocate submitted that the Essential Commodities Act is a legislation made under Entry 33(b) of List-III, the legislative topic being foodstuffs including edible oilseeds and oils. Sugarcane is a food stuff. The Central Government under the Order is empowered to fix the minimum price for the sugarcane. The fixation of maximum price is not covered by the said Order. As the said entry falls within List-III, the Concurrent List, the State Government has the power to fix the maximum price as the said field is not covered and there is no inconsistency between the fixation of minimum price and fixation of maximum price and, therefore, challenge for such fixation must fail. It was also contended and specifically pleaded in the statement of objections that the impugned letter is issued by virtue of the power conferred under Article 162 of the Constitution by the State Government and, therefore, it has the effect of the law.

6. In the light of the aforesaid undisputed facts and the rival contentions, the question that arise for consideration is,

Whether the Slate Government has got the power to fix the minimum price of sugarcane?

7. Article 162 of the Constitution of India deals with extent of executive power of State. It provides that, subject to the provisions of the Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws. The proviso makes it clear that, any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State, shall be subject to, and limited by, the executive power expressly conferred by the Constitution or by any law made by Parliament upon the Union or authorities thereof. Part XI, Chapter I of the Constitution deals with Legislative Relations and Distribution of Legislative Powers. Article 246 provides that, the Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule. The Legislature of any State has exclusive power to make laws in respect of any of the matters enumerated in List II in the Seventh Schedule-State List. In so far List-III is concerned, Parliament as well as the Legislature of

the State has the power to make laws with respect to any of the matters enumerated in List-III in Seventh Schedule-the Concurrent List. Article 254 provides, if any provision of a law made by the Legislature of a State is repugnant to any provision, of a law made by Parliament, which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of Clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

8. In *State of Orissa Vs. M.A. Tulloch and Co.*, it was observed;

15. Repugnancy arises when two enactments both within the competence of the two legislature collide, and when the Constitution expressly or by necessary implication provides that the enactment of one Legislatures has superiority over the other, then to the extent of the repugnancy the one supersedes the other. But two enactments may be repugnant to each other even though obedience to each of them is possible without disobeying the other. The test of two legislations containing contradictory provisions is not however, the only criterion of repugnancy, for it a competent legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field, the enactments of the other legislature whether passed before or after would be overborne on the ground of repugnance. Where such is the position, the inconsistency is demonstrated not by a detailed comparison of provisions of the two statutes but the mere existence of the two pieces of legislation.

9. In *M. Karunanidhi Vs. Union of India and Another*, the Supreme Court observed that before Article 254(1) is attracted and a State Law is invalid, following conditions must be satisfied,

24. ...1. That there is a clear and direct inconsistency between the Central Act and the State Act.

2. That such inconsistency is absolutely irreconcilable.

3. That the inconsistency between the provisions of the two Acts is of such a nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other.

10. A Division Bench of this Court in the case of *Vasavi Traders v. State of Karnataka and Ors.* reported in 1982 (2) Kar LJ 357, held as under:

Article 254 of the Constitution deals with concurrent powers of the Union and the State Legislatures. It provides that in case of repugnancy, the law of the Union prevails and the law of the State, to the extent of such repugnancy is invalid. In a federal Constitution, it is said, that it is inevitable that the two governmental authorities should touch each other at many points. There is consequently, bound

to be some over-lapping which may be lessened though not altogether eliminated by the accurate definition of their spheres. Any conflict between the repositories of the concurrent power can only be resolved by appeal to a provision in the fundamental law. Where both the legislatures have exercised a power over a subject which is common to both of them, the State law fails not because it is ultra-vires, but because its operation is overridden by the authority of a legislature which is considered superior for the purpose.

11. It is in the background of this settled legal position we have to see what is the power of the State to fix the minimum or maximum price for sugarcane. The Essential Commodities Act, 1955 is a legislation, enacted by the Parliament in exercise of the concurrent legislative power under Entry 33 of List-III as amended by the Constitution Third Amendment Act, 1954, the legislative topic being foodstuffs including edible oilseeds and oils, Section 2(a) of the Act defines "essential commodity", Sub-clause (v) of that Clause brings foodstuffs within the definition of essential commodity, Clause (b) of Section 2 provides that, food-crops include sugarcane. Section 3(i) provides that if the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and commerce therein. Clause (c) of Section 3 provides for controlling the price at which any essential commodity may be brought or sold, From the scheme of Clauses (b) and (c) of Sections 2 and 3 of the Act it is clear that the Parliament intended to bring under control the cultivation and sale of food crops. Food crops were defined as including crops of sugarcane. Section 3(1) gave the Central Government powers to control the production supply and distribution of essential commodities and trade and commerce therein for maintaining or increasing the supplies thereof or for securing their equitable distribution and availability at fair prices. These provisions would certainly bring within the scope of Central legislation the regulation of the production of sugarcane as also the controlling of the price at which sugarcane may be brought or sold. The Sugarcane (Control) Order, 1966 is a statutory order made in exercise of the powers conferred by Section 3, of the Essential Commodities Act, 1955, investing the Central Government with the power to fix the price of sugarcane and direct payment thereof as also the power to regulate the movement of sugar cane. Clause (3) of this Order provides for minimum price of sugarcane payable by producer of sugar.

12. Clause (3) reads as under:

3. Minimum price of sugarcane payable by producer of sugar:- (1) The Central Government may, after consultation with such authorities, bodies or associations as it may be fit, by notification in the Official Gazette, from time to time, fix, the minimum price of sugarcane to be paid by producers of sugar or their agents for the sugarcane purchased by them having regard to-

(a) the cost of production of sugarcane;

- (b) the return to the grower from alternative crops and the general trend of prices of agricultural commodities;
- (c) the availability of sugar to the consumer at a fair price;
- (d) the price at which sugar produced from sugarcane is sold by producers of sugar; and
- (e) the recovery of sugar from sugarcane:

(Provided 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 3-A, allow a suitable rebate in the price so fixed.

Explanation - (1) Different prices may be fixed for different areas or different qualities or varieties of sugarcane.

(2) No person shall sell or agree to sell sugarcane to a producer of sugar or his agent, and no such producer or agent shall purchase or agree to purchase sugarcane, at a price lower than, that fixed under Sub-clause (1).

It also provides for payment of additional price for sugarcane purchased at Clause (5). Additional price for sugarcane purchased on or after 1st October, 1974 is provided under Clause 5A.

13. A Division Bench of this Court in the case of *Vasavi Traders v. State of Karnataka and Ors.* 1982 (2) Kar. LJ 357 had an occasion to consider the effect of the provisions contained in the Sugarcane (Control) Order, 1966. The question which arose for consideration in the said decision was, whether in view of the provisions regulating marketing of sugarcane contained in the Sugarcane (Control) Order, is it permissible for the State Legislature to regulate the marketing of sugarcane. In that context it was held as under;-

The Sugarcane Control Order regulates every aspect of marketing of sugarcane and its provisions are irreconcilable with the provisions relating to the marketing under the Act. For instance, the place of delivery, the price, the manner of its payments are all fixed by the statutory order. The same aspects of marketing are sought to be regulated, by the Act. The two sets of provisions collide, Section 6 of the Essential Commodities Act gives overriding effect to the Orders made u/s 3 of that Act as against any other law. The small portion of the sugarcane grown by the grower the sale of which is left regulated under the statutory order is again a matter - and part - of the policy of the regulation itself.

14. The aforesaid reasoning clearly indicates that the entire field of regulation of purchase and sale of Sugarcane and fixing of the price of the Sugarcane, if it so purchased or sold is occupied by the Sugarcane Control Order. This reasoning of the Division Bench was affirmed in the case of *State (Delhi Administration) Vs. Laxman Kumar and Others*, The said judgment has attained finality with the seal of the Apex Court.

15. This legal position is re-affirmed by the Apex Court in Constitution Bench judgment in the case of *The Belsund Sugar Co. Ltd. Vs. The State of Bihar and Others Etc.*, -

16. The Bihar Legislature enacted the Sugarcane Act, 1981 in exercise of its legislative powers under Entry 33 of the Concurrent List. It also enacted Bihar Agricultural Produce Market Act, 1960 under Entry 26 and 27 of the State List read with Entry 28 therein. The Constitutional validity of this Market Act was the subject matter before the Supreme Court. While dealing with the said question in the aforesaid judgment, the relevant provisions of the Market Act was extracted. Relevant provisions of the Sugarcane Act and the Sugarcane Order was also extracted. After a comparative reading of these provisions, it was held as under:

61. The relevant provisions of the Sugarcane (Control) Order show that it seeks to lay down the minimum guaranteed price of sugarcane to the sugarcane growers with a corresponding obligation on them to supply sugarcane to the earmarked factories for which the reserved areas can be fixed. This Order also contemplates a negotiated price between the sugarcane growers on the one hand and the sugarcane factories on the other, for whom a fixed quota of sugarcane can be earmarked.

62. It has to be appreciated that the aforesaid provisions of the Sugarcane (Control) Order operate in the same field in which the Bihar Legislative enactment, namely, the Sugarcane Act operates and both of them are complementary to each other. When taken together, they wholly occupy the field of regulation of price of sugarcane and also the mode and manner in which sugarcane has to be supplied and distributed to the earmarked sugar factories and thus lay down a comprehensive scheme of regulating purchase and sale of sugarcane to be supplied by sugarcane-growers to the earmarked sugar factories. It is, however, true that a comprehensive procedure or machinery for enforcing these provisions is found in greater detail in the Sugarcane Act of the Bihar Legislature. But on a combined operation of both these provisions, it becomes at once clear that the general provisions of the Market Act so far as the regulation of sale and purchase of sugarcane is concerned get obviously excluded and superseded by these special provisions.

17. In fact in coming to the aforesaid conclusion, the Constitution Bench referred to the judgment of this Court in *Vasavi Traders v. State of Karnataka* 1982(2) Kar.L.J. 357. They observed that, the aforesaid reasoning of the learned Judges of the Karnataka High Court clearly indicates that the entire field of regulation of purchase and sale of sugarcane in the market area is occupied by the Sugarcane (Control) Order. This reasoning was left untouched, by this Court in appeal against the said, decision and, thereafter,, got confirmed in the case of *ITC Limited v. State of Karnataka*.

18. It is interesting to note that in the said Sugarcane Act, Section 42 dealt with minimum Price to cane supplied to an unit and it reads as under:

36. Section 42 deals with minimum price of cane supplied to a unit and reads as under:

42. The State Government may, after consulting the Board, determine by notification in the Official gazette, in respect of any area the minimum price of cane payable by the owners of units to the cane-growers or cooperative societies for cane supplied to them in the crushing year concerned

Provided that the minimum price so determined shall not exceed the minimum price payable by the occupier of a factory under any law for the time being in force, in respect of the cane supplied from the same area.

19. A reading of the aforesaid provision makes it clear that the State Government was conferred with the power to fix the minimum price under the said Act. But, the proviso to the said Section made it clear that the minimum price so determined by the State Government shall not exceed the minimum price payable by the occupier of a factory under any law for the time being in force, in respect of the cane supplied from the same area. Obviously, the law for the time being in force referred to therein is the Sugarcane (Control) Order, 1966. The law passed by the State Legislature expressly provided that the minimum price fixed under the Sugarcane (Control) Order, 1966 is the ultimate price and the State Government even though it is vested with the power to fix the minimum price the said price shall not exceed the minimum price fixed under the Sugarcane (Control) Order, 1966. The Constitution Bench in the aforesaid judgment held they are complementary to each other and they do not collide. If it collides the law made by the Parliament being superior in that context that has to prevail.

20. Therefore, it is clear that the State Government has no power in the first instance to pass any legislation or to pass any order under Article 162 of the Constitution, in the absence of any such law, fixing the minimum price of sugarcane contrary to the minimum price fixed by the Central Government under Sugarcane (Control) Order. As held by the Division Bench of this Court, the entire area is covered by a Central law and, therefore, the State Government has no power to pass an order fixing the minimum price for sugarcane. The minimum price is fixed by the Central Government under the aforesaid Order. When the minimum price fixed by the State collides with the minimum price fixed by the Central Government it is the minimum price fixed by the Central Government which would prevail and to that extent the minimum price fixed by the State Government has to yield. This is the Constitutional position.

21. The impugned order reads as under:

Therefore, I request all the Deputy Commissioners to ensure that the, additional sugarcane price of Rs. 160 per M.T. in addition to the SMP determined by Government of India is to be paid to the farmers for the cane crushed during the sugar year 2007-08. In view of the upward trend noticed in the prices of molasses and sugar it is all the more essential to ensure prompt payment to

farmers.

Sd/- (B.H. Manjunath) Commissioner for Cane Development and Director of Sugar in Karnataka.

22. From the way the impugned orders is worded it is clear that the Government is conscious of the settled legal position, It is not an order passed under Article 162 of the Constitution, They know they cannot pass an order purporting to be under Article 162 fixing the minimum price or a price which they deem fit as proper price for sugarcane. That is why no Government Order is passed fixing such a price for sugarcane. It is only in the statement of objections filed they are contending that it is an order passed under Article 162 of the Constitution, Unfortunately, the Government which is the upholder of rule of law, which is aware of the legal position, is afraid of passing an order contrary to law, has resorted to this dubious way of getting a letter written by the Commissioner for Cane Development and Director of Sugar in Karnataka to the Deputy Commissioners in the form of a request, to ensure payment of the higher price for sugarcane to the farmers in respect of which they have no authority. As rightly pointed out by the Counsel for the petitioners, it is a strong arm method adopted by the State Government which has no authority of law. It is patently illegal, probably made with the intention of satisfying the farmers at the expense of the rule of law. It is by such orders an impression is sought to be created in the minds of the innocent farmers that when the State wants to help the farmers by paying them higher price, the Courts are coming in the way by striking down such orders. It is unfortunate that, in a democracy where there should be transparency in the Governmental actions, they owe a duty to the public to educate them about the law governing them, the limits of the law and try to find solutions within the frame work of law. The Governments ought to know that they derive the power and authority under the Constitution and their actions have to be within the constitutional limits. They cannot resort to short cut methods and put the blame on the other wing of the State. If the Government is really concerned about the welfare of the sugarcane growers, they can very well help them in several other ways without transgressing the law. It has three options:

1. First, pass a law and obtain the assent of the President. In which event the law passed by the State legislature override the law passed by the Parliament.
2. Second, request the Central Government to issue a notification under Clause 11 of the order authorising the State Government to fix the price of sugarcane, in which event under the Sugarcane (Control) Order, 1966 itself they would get power to fix the minimum price for the sugarcane in the State of Karnataka.
3. Third, the Government has extended various concessions and granted subsidies to the sugar mills as set out in para (2) supra. Similar benefits could be extended to sugarcane growers, thus reducing the cost of inputs. Give them subsidy or support price, i.e., the difference in the price between the minimum

price fixed by the Central Government and what they intend giving it to the farmers.

23. These are the legal modes by which a State Government can go to the rescue of the farmers. Instead of doing that, unilateral declaration of sugarcane price immediately after occupying the seats of power after the general elections or ejection promises would not further the interest of the farmers. It is only a gimmick. A Government which is sincere in solving the problems of sugarcane growers should not indulge in such gimmicks.

24. Hence, I pass the following order:

(a) Writ Petitions are allowed.

(b) The impugned orders/letters are hereby quashed.

(c) It is also declared that the State Government has no power to fix the sugarcane price as it is beyond its competence and it is only the Central Government which has the jurisdiction or the power to fix the price of the sugarcane.

(d) No costs.