(2015) 01 KAR CK 0006

In the Karnataka High Court

Case No : Writ Petition No. 103830 of 2014 (GM-RES)

The India Sugars and Refineries Limited	APPELLANT
Vs	
The State of Karnataka and Others	RESPONDENT

Date of Decision : 20-01-2015

Acts Referred:
Essential Commodities Act, 1955 — Section 3, 3(iii)(c)

Citation : (2015) 01 KAR CK 0006

Hon'ble Judges : Anand Byrareddy, J.

Bench : Single Bench

Advocate : K.G. Raghavan, Senior Advocate for F.V. Patil, A. Murari and H.N. Shashidhara, Advocates, for the Appellant; K. Vidyavathi, Additional Government Advocate, for the Respondent

Judgement

Anand Byrareddy, J.—The brief facts of the case are as follows:

2. The petitioner is a public limited company incorporated under the Indian Companies Act, 1919 and has established a sugar factory at Chitwadgi, Hospet taluk, Bellary District, in the year 1933. As on date, it is said to have a crushing capacity of 2500 TCD.

It is stated that with the construction of a dam across the river Tungabhadra, there was plentiful water supply to the Districts of Bellary, Raichur and Koppal. This led to the establishment of several sugar factories in the said regions, over the years. The farmers in those regions were encouraged to grow sugar cane. But over the years, most of the factories have stopped production and the companies or co-operative societies running them have become redundant. The petitioner claims that it has managed to tide over many a crises in the past.

It is stated that sugar and sugarcane have been declared as an essential commodity under the provisions of the Essential Commodities Act, 1956 (Hereinafter referred to as the ''EC Act'', for brevity), a Central enactment. The Union government is said to have issued several orders regulating the supply and production of both sugar and sugarcane. By virtue of the same, producers of sugar are not completely free to sell the sugar produced. As at present, the producers of sugar are required to surrender 20% of the sugar produced by them to the Central government or its nominee, at a price determined by the Central government in accordance with Section 3(iii)(c) of the EC Act. Though the factories are free to sell the remaining quantity of the sugar, such sale is again regulated by the Central Government which prescribes the quantity that can be sold and the period during which such quantity can be sold, by issuing ''Release Orders''. The object of such control exercised by the Central government is to ensure that there is no abnormal increase in the price of sugar and that the same is available to the consumer at a fair price.

The Central Government has also promulgated the Sugarcane (Control) Order, 1966, (Hereinafter referred to as the ''1966 Order'', for brevity) in exercise of power under Section 3 of the EC Act, and by virtue of the same, the Central Government is enabled to fix the minimum price of sugarcane used in the production of sugar. This minimum price is known as the ''Fair and Remunerative Price'' (FRP), payable to the growers of sugarcane. The minimum price payable by each factory is also determined by the Central Government by the issuance of a Sugarcane Price Determination Order. However, there is no bar for the growers to be paid a higher price under separate agreements between the growers of sugarcane and the producers of sugar. No sugar factory can pay less than the FRP. The growers in a reserved area could neither sell the sugarcane at less than the FRP, nor transport the cane outside the reserved area, except on the basis of export permits issued by the competent authority.

Under Clause-6 of the 1966 Order, the Central Government reserves an area for each sugar factory having regard to its crushing capacity and other relevant factors. This power has been delegated to the State Government, which determines the ''Reserved Area''. When once such area is reserved, the grower within that area is bound to supply the quantity of sugarcane grown by him as determined under the said Order and the producer of the sugar is also bound to purchase the sugarcane so required to be supplied.

Over a period of time, the sugarcane growers in each reserved area organized themselves into associations and chose to negotiate aggressively for a higher price, leading to the producers succumbing to pressure to ensure a higher recovery, which was possible only on a timely harvest and crushing of the cane. This recurring circumstance lead to most producers suffering huge losses from which they never recovered. The petitioner was no exception and in the year 1998, its accumulated losses are said to have touched Rs. 341.12 lakh. The petitioner was declared a sick industry under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985, by the Board for Industrial and Financial Reconstruction. Thereafter, a scheme for rehabilitation was sanctioned and accepted as on 12.2.2002.

It is stated that the price of free sale sugar fell drastically during the sugar season 2006-2007. It is said to have fallen from Rs. 1600/- per quintal in December 2006 to Rs. 1100/- per quintal in February, 2007. This was said to be on account of excess production of sugar in the country. The producers were unable to pay the sugarcane price to the growers, in time.

Incidentally, till October 2009, Clause 5A of the 1966 Order required the producers of sugar to pay the sugarcane growers an ''Additional Cane Price'', calculated on the basis of the realization made by the producers of sugar by selling the free sale sugar in the market. This price became statutorily payable after the factories furnished the figures with regard to their production and free sale realization. Though Clause 5A of the 1966 Order was omitted with effect from October 2009, for the sugar season 2006-07 and 2007-08, as was the practice that had come into vogue, the Hospet Raithara Sangha, a co-operative of the sugarcane growers within the reserved area of the petitioner''s factory had been receiving the price of cane consisting of the FRP and an advance against the Additional Price payable under Clause 5A of the 1966 Order. But on account of excess production of sugarcane, there was a stalemate as to the price payable. In particular, the crushing season 2006-07 is said to have started from 4.1.2007 and for the 2007-08 season, it is said to have started in February 2008. Given the dead lock between the growers and the producers, the Union Government as well as the State Government had initiated a slew of measures such as the Union Government providing for:

"i. The creation of a buffer stock on which the Government paid the interest, insurance, rent etc., on the holding stock

ii. Lifting of a ban on the export of sugar

iii. Transport subsidy for export of sugar iv. Financial assistance by way of Excise duty loan relatable to SMP (now known as FRP) for the sugar season 2006-07 and 2007-08"

While the State Government also provided the following measures:

"i. Exemption of Purchase Tax for the period from 14.6.2007 to 31.3.2008

ii. Grant of subsidy of Rs. 100/- per MT for the extended period of crushing from 16.4.2007 till completion of crushing of all standing crops.

iii. Rs. 25000/- per hectare to the farmers, whose standing crop was not crushed during the season 2006-07

iv. Export subsidy at Rs. 100/- per Quintal of sugar exported."

In spite of the above, the petitioner who had paid the sugarcane price of Rs. 1,000/- MT, up to 18.5.2007 and at the rate of Rs. 928.50/- MT till 31.7.2007 suffered a loss of Rs. 10.00 Crore. It is further claimed that for the sugar season 2007-2008, the sugar price was between Rs. 1000/- to Rs. 1100/- per quintal in the open market, but the petitioner was compelled to pay the Statutory Minimum Price (SMP) apart from incentives. However, it is claimed that the respondents had failed to extend the reliefs and concessions which were offered by them.

The petitioner had hence approached this court by way of a writ petition in WP 34524/2010, complaining inaction on the part of the respondents and seeking appropriate reliefs. The respondents on entering appearance had stated that the claim in so far as the export subsidy and the incentive towards the extended period of crushing, were concerned, were under the active consideration of the State. The petition was said to have been disposed of on recording the assurance of the State government. Subsequently, a sum of Rs. 89,43,950/- is said to have been released in favour of the petitioner.

The petitioner is said to have made a detailed representation emphasizing that the petitioner was entitled to the export subsidy. The said claim was said to have been recommended for payment by the second respondent. But the first respondent to whom such recommendation was said to have been made had not acted on it. The petitioner had therefore initiated contempt proceedings in CCC 3133/2013 before this court. The same is said to have been disposed of with a direction to the respondents to expedite the consideration of the claim. However, the respondents are said to have denied the claim on the ground of budgetary constraints, namely, that the export subsidy payable to the sugar factories, generally, was limited to Rs. 10.00 crore and that limit had been crossed and hence the petitioner could not be provided any such subsidy, though this factum of a cap on the subsidy, was not made known to the petitioner at any earlier point of time.

It is contended that the extended crushing operation of the petitioner''s factory for the sugar season 2006-07, the cane growers of the reserved area of the petitioner''s factory had benefitted at the cost of the petitioner. The second respondent being conscious of such a piquant situation, is said to have recommended to the first respondent to release the subsidy amount in favour of the petitioner as claimed by it in its claim statement dated 25.4.2010. However, the very second respondent has been constrained to pass an order dated 17.3.2012, inter alia, declining to consider the case of the petitioner that the compensation amount of Rs. 25,000/- per hectare which was to be paid to the cane growers, whose standing sugarcane crop remained uncrushed during the year, to the petitioner. As the petitioner was compelled to crush such sugar cane, notwithstanding the poor recovery of sugar, in a total quantity of 99,27,492 MT, between the period 1.6.2007 to 31.7.2007, to bale out such growers, whose sugarcane was not procured. In other words, the Government having taken a decision to pay Rs. 25,000/- per hectare to every grower, whose standing sugarcane crop remained uncrushed beyond 31.5.2007, would have been paid such amount if not for the petitioner having agreed to extend its crushing operations beyond that period for the sake of such growers. The petitioner is said to have paid Rs. 925.50 per MT of sugarcane, as against Rs. 330/- per MT, which they would have received if the said cane had not been crushed after 31.5.2007. It would hence follow that in all fairness, the said amount which was assured to the growers, should rightfully be paid to the petitioner in respect all such cane crushed in the reserved area of its factory, after 31.5.2007. The naive reason assigned that the said amount was intended for the growers and not to the petitioner, ignores the glaring circumstance that the petitioner had willfully suffered the loss in undertaking the extended crushing operation at the instance of the Government and in the expectation of being appropriately compensated by it. The petitioner claims a sum of Rs. 3,26,79,072/- on this account.

Incidentally, it is pointed out that the State Government has in fact benefitted by way of additional revenue, such as Purchase tax, Excise duty on the manufacture of alcohol from molasses, a by-product of sugarcane, by virtue of the additional sugarcane crushed by the petitioner''s factory.

It is in the above background that the present petition is filed.

3. The petition is opposed by the State and it is contended that the delay in the starting of the crushing operations for the period 2007-08 cannot be attributed to the State government having allegedly protracted any negotiation as regards the fixation of the cane price. It is asserted that the State Government has never fixed the sugarcane price at any point of time. It is stated that it was the following sequence of events that may have lead to a delay and hence no blame can be cast on the State government. It is stated that the State had extended certain concessions to the sugar mills in the State and had directed that the mills pay a sum of Rs. 160/- MT, over and above the Statutory Minimum Price during the year 2007-08. This had been challenged by several mills, by way of a writ petition before this court, in WP 6385/2008 and by an order dated 13.2.2009, it was held that the State government had no power to fix the sugarcane price, in addition to the SMP determined by the Union Government. That order is said to have been challenged by way of a writ appeal. The appeal was said to have been partly allowed, holding, that the decision of the State Government to pay Rs. 160/ MT to the sugar cane growers be construed as a consent order. The said Judgment is said to have been challenged by the Mills before the apex court in SLP 373508-510/2013.

It is emphasized that the respondents cannot be held responsible for any loss suffered by the petitioner.

It is further elaborated that the petitioner has sought for quashing the order dated 20.8.2013 bearing No. CI 211 SGF 2010, issued by first respondent as well as the endorsement dated 24.9.2013 bearing No. CI 211 SGF 2010 issued by second respondent vide Annexure-B and to issue directions to the respondents to release export subsidy of Rs. 1,01,83,400/- as per recommendation bearing No. BSK/STT/13-37/2007-08 dated 17.05.2012.

It is contended that the petitioner is not entitled to any relief much less the relief sought in the writ petition for the following reasons:

That the endorsement dated 24.9.2013 is not an endorsement issued by respondent No. 2.

It is contended that the State Government has extended certain concessions to the sugar mills and directed the sugar mills to pay Rs. 160/- per MT over and above the SMP during the year 2007-08. The sugar mills have challenged the directions in WP 6385/2008 and this court by its order dated 13.2.2009 held that the State Government had no power to fix the sugar cane price in addition to the SMP determined by the Government of India. Against which, the Government had filed a writ appeal in WA 3956/2009 and this court by its judgment dated 10.7.2012 concurred with the ruling of the learned single judge that the Government had no power to fix the additional sugarcane price, but allowed the writ appeal and held that the direction to the State to pay Rs. 160/- per MT to the sugarcane growers is held as a consent order and the order of the single judge was modified.

It is contended that the South India Sugar Mills Association has challenged the order dated 10.7.2012 passed in WA 3956/2009 in SLP 373508-510/2013. The government has not fixed the sugarcane price at any point of time. Such being the case, the contention of the petitioner that protracted negotiations in the matter of fixation of cane price would delay the starting of the crushing season, thereby causing loss every year, is not tenable.

It is contended that the respondents are not responsible for the loss suffered by the petitioner - factory. The petitioner -factory should have maintained cordial relationship with the farmers of the reserved area by extending all the facilities and by paying the dues within the stipulated time. The farmers having compulsorily supplied their sugarcane to the petitioner - factory in compliance with the Sugarcane (Control) Order deserve to be paid within 14 days of the supply which is a statutory right of the farmers.

It is contended that the sugar industry has been subject to fluctuations, and in times of crises, both the State and Union Governments have been announcing relief measures supporting both the sugarcane growers and the factories. As the major component of the cost of producing sugar is the price paid for the sugarcane, the conditions of the growers and the factories have always been inter-linked and both have to share the burden at the time of crises. During the sugar season 2007-08, though the total amount of cane expected to be crushed by the sugar factories in the State was about 270 lakh MT, actual production of sugarcane was 340 lakh MT. Even after accounting for jaggery units and for seeds, the uncrushed cane was estimated to be 25.00 lakh per MT. In the preceding sugar season of 2006-07 also, significant quantity of sugarcane had remained uncrushed and the government had announced and implemented several measures in a relief package which included payment of Rs. 25,000/- per hectare of uncrushed cane to the farmers. During the sugar season 2007-08 also, the Government is said to have held a series of discussions with the farmer groups and the representatives of the sugar industry. While the sugar factories pleaded their difficulty in paying the SMP, the farmers continued their protests demanding a higher cane price. The government is said to have finally resolved that Rs. 160/- per MT should be paid above the SMP to the farmers. This was to be done along with several relief measures and incentives. Since the crushing period was likely to be extended on account of the huge quantity of sugarcane available, the government had extended exemption from purchase tax up to 31.7.2008, which would have come to a close at the end of the financial year as on 31.3.2008. Along with this additional period of exemption from 1.4.2008 to 31.7.2008, the other significant benefit to the sugar factories was the decision to provide Rs. 100/- per MT of sugarcane crushed late, during the period from 1.4.2008 to 31.7.2008. Yet another important benefit given to the industry was in the form of export subsidy of Rs. 1000/- per MT of sugar exported. Besides, a transport subsidy of Rs. 2/- per Kilometre per MT was also paid. The movement of molasses was also liberalized. Thus, a significant amount of financial support was provided to the industry through a combination of measures by the State Government.

It is contended that it may be possible that the financial impact of all the measures initiated by the State Government for the benefit of the sugar factories might not have been equal to the additional amount of payment for the sugarcane procured, but the effort on behalf of the State Government was to find a balance between the interest of the farmers and that of the factories. In a difficult year, when the standing crop of sugarcane is more than what the factories can crush profitably and when the prices are down, it is extremely difficult for the State Government to either satisfy the farmers or completely protect the interest of the factories. While the State Government tried to be fair and support as much as feasible within the budgetary constraints. Indeed, the budgetary outgo due to these measures was quite significant, because the State Government has forgone its revenue on purchase taxes, and also provided additional subsidies for transport, export and for the extra cane crushed.

The demands of the farmers as well as the factories had been examined by the State Government, and the Executive Committee constituted under the Governor had decided on 1.3.2008, about taking measures as a compensation package, on the basis of which, an order was issued in G.O. No. CI/19/SGF/2008 dated 12.3.2008, giving details of the benefits to be extended to both farmers and the factories. Among other benefits, complete exemption from purchase tax for the year 2007-08 is included, which was later extended up to 31.7.2008.

Further, it is contended that the Government Order dated 12.3.2008 is clear that the export of sugar by all the mills is limited to 1,00,000 tonnes and Rs. 10.00 crore as the upper limit. Therefore, it is contended that it is not fair to assume that the State Government has not considered the demands of the factories, even though the compensation package might not have completely met their expectations.

As regards the export subsidy of Rs. 100/- per quintal of sugar exported from the date of the order till the period of GOI export concession order is concerned, it is contended that the Government Order dated 12.3.2008 is clear that the sugar export by all the sugar mills is limited to 1,00,000 tonnes. Further, the Government order had stipulated Rs. 10.00 crore as the upper limit, which was a policy adopted by the Government. It is contended that, the Government has released up to Rs. 9.91 crore in three phases.

It is contended that the second respondent had released the said amount of Rs. 9.91 crore vide order (1)DSK/STT/13-1/2007-07 dated 1.7.2008 (Rs. 2.00 Crore) (2) C1/19/SGF/2008 (part-2) dated 16.12.2008 (Rs. 4.04 Crore) (3) DSK/STT/13-1/2007-07 dated 17.12.2008 (Rs. 3.87 Crore) to the respective sugar factories.

It is contended that Sri Renuka Sugars Limited had filed a writ petition in WP 23353/2010 and 23354/2010 with a prayer to direct the respondents to consider its request for release of export subsidy. This court while disposing of the above petitions on 3.8.2010, is said to have directed the respondents 1 and 2 to consider the representation dated 14.6.2010 in accordance with law and on merits. Pursuant to the said direction, the second respondent therein, the Secretary to Government, Commerce and Industries Department, is said to have passed an order on 26.11.2010, and held that as per the Government order dated 12.3.2008, the total export subsidy to all the sugar mills is restricted to Rs. 10.00 crore and since a large amount of claims were received and as per the guidelines followed in disbursing the export subsidy, the export subsidy claims of Sri Renuka Sugars Limited, was rejected.

It is contended that pursuant to the directions of this court, sitting at Dharwad Bench in WP 7169/2008 dated 29.7.2013, WP 72498-502/2012 dated 1.7.2013 and WP 76567-568/2013 dated 20.7.2013 regarding arrears of cane bill dues payable to the farmers by the petitioner - factory for the years 2002-2003, 2003 - 04 and 2006-07, the Commissioner for Cane Development and Director of Sugar, the second respondent herein, had heard the parties and by order dated 26.10.2013 held that the petitioner -sugar factory has not paid the SMP fixed by the Government of India for the year 2002-03, 2003-04 and 2006-07. The petitioner has challenged the order dated 26.10.2013 in WP 84435/2013 and the matter is said to be reserved for judgment.

It is contended that the petitioner has filed WP 34524/2010 with a prayer to direct the respondents to consider their representation dated 25.4.2010 regarding the claims for extended period of crushing and export subsidy. This court on 4.7.2011, while disposing of the writ petition, is said to have directed the petitioner to make a detailed representation to the respondents and further directed the respondents to consider the payment of the agreed amounts. The petitioner is said to have submitted its representation on 2.8.2011 and a legal notice was issued through its advocate on 7.6.2012. In the reply to the legal notice, it was made clear that subsidy for the extended period of crushing from 1.4.2008 to 31.7.2008 in respect of the total claims of Rs. 1,78,87,700/- was fully paid and with regard to the export subsidy, the Government Order stipulated Rs. 10.00 crore as the upper limit and this was a policy decision of the Government. Keeping the upper limit in view, the sanction of upto Rs. 9.91 crore was released and the proposal of the petitioner was rejected. As regards the subsidy of Rs. 25,000/- per hectare to the farmers for the uncrushed cane left in the fields is concerned, the factory was not entitled and the claim is rejected.

It is contended that the State Government keeping in view the terms and conditions laid down in the Government Order regarding extending the benefits of the subsidy to the sugar mills, as well as to the farmers, has examined the representation of the petitioner within the frame work of the Government order and issued the impugned order dated 20.8.2013 and endorsement dated 24.9.2013 to the petitioner informing that it was not entitled for the subsidy claimed.

It is contended that the sugarcane crop in the State during the year 2006-07 and 2007-08 was in excess and in the interest of the farmers and the sugar industry, a decision was taken to crush all of the standing crop up to 31.5.2007 and to continue the crushing operation till all the standing sugarcane was harvested and crushed. And for the extended period of crushing, both the Union Government and Government of Karnataka are said to have extended several concessions, which have been stated above.

The petitioner, inspite of not paying Rs. 160/- per MT, has availed the benefit of Rs. 192.03 lakh during 2006-07 and Rs. 178.88 lakh during 2007-08. The matter relating to payment of Rs. 160/- is pending before the Supreme Court in SLP No. 37508-510/2013. The Supreme Court on 13.10.2014 has posted the matter for final disposal in the month of January 2015. In the meanwhile, the apex Court has continued the order granted earlier staying the orders dated 10.07.2012 passed in W.A. No. 3956/2009 and 4161-62/2009.

It is contended that this Court, by its order dated 14.7.2011 in Writ Petition No. 34524/2010, had observed at Para-6 as follows:

"Insofar as the claim of the petitioner for the subsidy concession of Rs. 25,000/- per hectare, which was extended to the farmers, prima facie the order dated 13.6.2007, no doubt, indicates that the said benefit had been granted to the farmers to see that the farmers not put to hardship if the sugarcane grown by them is not crushed by the sugar factories. However at the juncture, since the learned counsel for the petitioner places reliance on the recommendation of the Commissioner for Cane Development and Director of Sugar to the Secretary to Government, Commerce and Industries Development wherein the Director has also included the said amount but without stating clearly as to how the petitioners are entitled to the same. It would be open for the petitioner to rely on the recommendations of the Director for the consideration by the respondents. The petitioner would be entitled to include that aspect also in the representation which is to be made by them. However, no opinion is expressed on that aspect of the matter, since it is for the respondents to take a decision after taking into consideration the representation, in view of the recommendations stated to have been made by the Director of Sugarcane. "

Further it is contended that this Court had also observed that the Commissioner for Cane Development and Director of Sugar had recommended the case of the petitioner to the Secretary to Government, Commerce and Industries Department but did not express any opinion in the matter and left the matter to the respondents to take a decision, after a representation was made by the petitioner - factory.

It is contended that pursuant to the directions of this Court, the petitioner did submit a representation on 2.8.2012 with a request to release a subsidy amount of Rs. 25000/- per hectare payable to the farmers to be paid to petitioner - factory as they had crushed the standing cane form 01.06.2007 to 31.07.2007 amounting to Rs. 3,26,79,072/- and export subsidy of Rs. 1,01,00,834/-.

It is contended that the representation of the petitioner dated 2.08.2011 was examined. And in the light of the Government Order dated 13.06.2007 in No. CI/58/SGF/2007(P-2), it was opined that the benefit of Rs. 25,000/- per hectare payable to the farmers for uncrushed the standing cane left in the fields could be passed on to the factory.

It is contended that the second respondent by his letter dated 17.3.2012 addressed to the Secretary to Government, Commerce and Industries Department is said to have requested to relax the upper limit of Rs. 10.00 crore subsidy for the export of sugar and to take decision with regard to payment of balance export subsidy amount of Rs. 1,01,83,400/- to the petitioner - factory.

It is contended that the petitioner''s reliance on the letter dated 14.8.2007 to contend that the second respondent had recommended for payment Rs. 25,000/- per hectare for the sugarcane which is crushed after 31.5.2007 is not tenable. The second respondent it is pointed out, had not recommended for payment of this concession, but has specifically stated "I have taken into consideration of passing on the ryots subsidy to the factory for the month of July 2007 only."

It is contended that the extension of concession is a policy decision of the Government and the authorities have to execute orders consistent thereto. The first respondent has issued a letter dated 20.8.2013 in No. CI 211 SGF 2010 to the petitioner that the Government cannot extend the subsidy benefit at Rs. 25,000/- per hectare and export subsidy.

It is contended that the Government Order dated 12.03.2008 has sanctioned export subsidy of Rs. 100/- per quintal of sugar exported by sugar factories restricting the subsidy amount to Rs. 10.00 crore as the upper limit up to which subsidy claims can be admitted. The second respondent had received proposals from 28 sugar factories claiming a total subsidy amount of Rs. 51.91 crore on different dates, of which, the claims of Malaprabha Co-operative Sugar Factory, Doodhganga Krishna Co-operative Sugar Factory, and Bilagi Sugars were processed and export subsidy was paid as their applications were prior to the application of the petitioner. However, only the proposal of M/s. Renuka Sugars, Saudatti was processed, which was after the receipt of the proposal of the petitioner - factory.

It is contended that the Government of Karnataka in letter No. CI/25/SGF/2011 dated 25.2.2014 had stated that the Government had taken a decision to stop payment of subsidy of Rs. 25,000/- to the farmers for the uncrushed standing cane in the fields and rejected the proposals for payment of export subsidy to the sugar factories.

4. Shri K.G. Raghavan, Senior Advocate, appearing for the Counsel for the petitioner, while reiterating the sequence of events would point out that the stand of the State Government that the policy decision of the Government on account of budgetary constraints, required a cap to be imposed on the subsidy that was to be extended to all sugar factories in the State together is not tenable. A plain reading of the notification dated 12.3.2008 would indicate that the limit specified was to be understood as pertaining to each factory. The petitioner''s claim was only to an extent of Rs. 1,01,83,400/- and hence the interpretation now sought to be placed is clearly an after-thought only to deny the benefit to the petitioner.

It is also pointed out that even if the specious plea now put-forth is to be accepted, the arbitrary denial of the benefit of the concession to the petitioner is glaring - as is disclosed by material obtained by the petitioner by recourse to the Right to Information Act, 2005; It is found that in disbursing such subsidy amounts, the State Government has unduly favoured certain entities, whose cases had been recommended by the Cane Commissioner, much after a recommendation had been made in favour of the petitioner. In that, the Commissioner is said to have made a recommendation in favour of the petitioner as on 14.10.2008, whereas in case of atleast four others though the recommendation was made much later, they were conferred the benefit and the petitioner was overlooked. In this regard the petitioner has furnished the particulars in support of the above contention in tabular form thus at Annexure-AC, to the petition:

"THE FOLLOWING INFORMATION RECEIVED FROM OFFICE OF THE COMMISSIONER FOR CANE DEVELOPMENT AND DIRECTOR OF SUGAR IN KARNATAKA, BANGALORE DATED 20.03.2013 UNDER RTI ACT FOR OUR APPLICATION DATED 28.02.2013 REGARDING SUGAR EXPORT SUBSIDY FOR THE SEASON 2007-08.

It is also pointed out that if indeed there was a cap on the subsidy amount, the basis on which the same has been distributed among the several claimants is also not disclosed. There is hence neither an indication that it was on a ''first come first served'' basis nor is there any indication of an equitable distribution of the benefit.

It is next contended that the denial of compensation by extending the benefit of the subsidy amount to the petitioner, which the State Government had earmarked in a sum of Rs. 25,000/- per hectare to be paid to all cane growers, with in the reserved area of the petitioner''s factory, whose standing crop of sugarcane was not harvested after 31.5.2007, on the footing that the benefit was intended for the growers and not sugar mills, it is contended is a statement of the obvious. It was never the case of the petitioner that it was expressly earmarked for the petitioner, it is in the face of such an offer to the growers in the reserved area of the petitioner''s factory, that a claim is raised by the petitioner, the justification of which is stoically sought to be denied rather childishly by the State. As the petitioner had extended its crushing operations and had baled out such cane growers, at its cost and to its prejudice, at the intervention of the respondents, the amount earmarked as above by the government having remained unused, it is a just due of the petitioner, which is unfairly denied. It is pointed out that on a reference made of the claim of the petitioner and two other sugar producers, by the concerned minister, to the Cane Commissioner, the same had been addressed in depth and the said authority had found that the claim was justified as indicated in a detailed and a reasoned order. Those findings have not been disturbed or overruled till date. Hence the stand of the Government in these proceedings cannot be sustained.

5. In the above background, this court is yet again called upon to adjudicate claims, which are capable of being thwarted by the State government, if not on the basis of a want of obligation, then in the guise of particular steps having been taken as a matter of State policy in the larger interest of the public, if not on the perennial plea of budgetary constraints. If this were not so, the petitioner would not have made this ''nth'' attempt at seeking salvation before this court.

At paragraph 5 of the petition, it is stated that the district in which the petitioner has its factory as "nothing but a graveyard of factories". Ominous words, but may be true. And going by the crisis faced by the sugarcane growers and the sugar industry, even during this sugar year - the woes of the petitioner and its ilk can only mount.

It cannot be denied that the sugarcane growers and the sugar producers are the two wheels of the sugar industry. The state government does claim to be aware of their respective ailments and also claims to be balancing the interests of both. Proceeding on that basis, if the claim of the petitioner pertaining to the diversion of the fund, which was earmarked to be paid to those sugarcane growers whose crop was left un-harvested beyond 31.5.2007- on account of a glut in sugarcane production, to the petitioner, in proportion to such sugarcane crushed by it, though it was not economically viable, does appear to be equitable and fair. The stand of the State government that the fund was specifically meant for the growers and could not be diverted to the petitioner as it was a policy decision of the government, is not tenable. If that contention is accepted, it follows that the state''s policy is lopsided and unreasonable. No doubt, the petitioner had crushed the cane and having produced sugar has earned revenue, but the exercise was at a huge loss and was undertaken as an outcome of parleys involving the state government, the sugarcane growers and the petitioner. The costs involved are a matter of record and it is a mere matter of ascertaining the bill ultimately paid by the petitioner, in producing sugar during that sugar year.

There is yet another justification in the petitioner''s claim. Though the situation of un-harvested sugarcane crops remaining even at the end of the sugar season during the year 2006-2007 was a common feature in several reserved areas of Bellary and other districts in the State, not all sugar factories were foolhardy to venture to crush such cane. The state government had, in those cases is said to have paid the growers the said subsidy at the rate of Rs. 25,000/- per hectare. Therefore, it would be unfair to punish the petitioner for playing the good Samaritan in the interest of the growers in its reserved area.

The following principles in relation to the doctrine of legitimate expectation are now well established:

"i) The doctrine of legitimate expectation can be invoked as a substantive and enforceable right.

ii) The doctrine of legitimate expectation is founded on the principle of reasonableness and fairness. The doctrine arises out of principles of natural justice and there are parallels between the doctrine of legitimate expectation and promissory estoppel.

iii) Where the decision of an authority is founded in public interest as per executive policy or law, the court would be reluctant to interfere with such decision by invoking the doctrine of legitimate expectation. The legitimate expectation doctrine cannot be invoked to fetter changes in administrative policy if it is in the public interest to do so.

iv) The legitimate expectation is different from anticipation and an anticipation cannot amount to an assertable expectation. Such expectation should be justifiable, legitimate and protectable.

v) The protection of legitimate expectation does not require the fulfillment of the expectation where an overriding public interest requires otherwise. In other words, personal benefit must give way to public interest and the doctrine of legitimate expectation would not be invoked which could block public interest for private benefit. (See: Monnet Ispat and Energy Ltd. Vs. Union of India (UOI) and Others,)"

Keeping the above principles in view, the respondent -state government is bound to compensate the petitioner in proportion to the financial burden the petitioner had borne in undertaking the above exercise, while keeping the amount, earmarked to be paid to the growers, as the measure. On that basis, a reasonable amount could be computed as compensation payable to the petitioner. The state government is accordingly directed to consider the case of the petitioner in terms as above and make payment with expedition, in any event, within a period of eight weeks from the date of receipt of a copy of this order.

In so far as the claim towards the export subsidy is concerned, as rightly contended on behalf of the petitioner, the purported ceiling limit of Rs. 10 crore as being earmarked for all the sugar factories in the State is not evident from the initial declarations made. A subsequent decision being cited in this regard is clearly an afterthought. In any event, it is not in dispute that the petitioner''s claim towards the said subsidy had been recommended for release much prior to that of several others, who have been conferred the benefit, as shown in Annexure AC, to the petition. Though this is vaguely denied by the State, it is categorically admitted that atleast the proposal of one company namely, M/s. Renuka Sugars, Saundatti, was processed and the subsidy released, which was after the receipt of the proposal of the petitioner. There is no explanation offered in this regard except admitting the same. On that count alone, the petitioner is held entitled to the benefit of the subsidy.

It is also significant that if there was indeed a cap on the subsidy - it is inexplicable that the State has chosen to distribute the same amongst few. There is no basis for the same. An equitable distribution was in order. It is indeed a disturbing feature.

The State government shall hence release the subsidy to which the petitioner was entitled to in its turn, with expedition, in any event, within a period of three months, from the date of receipt of a copy of this order, if not earlier.