

(1987) 03 KAR CK 0005

In the Karnataka High Court

Case No : Writ Petition No. 19200 of 1985

The Sugar-cane Growers" Association

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 24-03-1987

Acts Referred:

Constitution of India, 1950 — Article 19, 226
Sugarcane (Control) Order, 1966 — Section 3

Citation : AIR 1988 Kar 132

Hon'ble Judges : M.P. Chandrakantaraj, J

Bench : Single Bench

Advocate : S.K. Venkataranga Iyengar, for the Appellant; W.K. Joshi and U. Abdul Khader, High Court Govt. Pleader, for the Respondent

Judgement

1. This matter is disposed of at the stage of preliminary hearing after notice to respondents and after hearing the Counsel for the petitioner and the respondents.
2. The petitioner is the Sugar-cane Growers" Association B. K. (hereinafter referred to as the Association) Kudchi Road, Ugarkhurd in Belgaum, by its Secretary Dr. Mohan M. Muthalik. The Association claims, it has a membership of 5000 sugarcane growers and the Association is formed for the welfare of the sugar-cane growers in Belgaum District.
3. In fact, I have often observed and even issued notice to the Registrar of Societies in Karnataka. It is strange that under the Karnataka Societies Registration -Act, 1960 (hereinafter referred to as the Act) registration is permitted to these Associations who neither have as their objects promotion of culture, sports nor education but their own trade or professional interests. On that ground it is open to this Court to reject the locus standi of the petitioner to prosecute this petition. Sec. 3 of that Act expressly provides the purpose for which the Association of person may have registered under that Act. If any Association carries on activities outside those purposes enumerated in Sec. 3 of the Act, it will not be entitled to the registration under that Act.

4. That apart, the grievance of the sugarcane growers expressed through the Association is that the impugned order at Annexure-A to the petition is ultra vires of the power of the State Government and in any event clause (4) of the order at Annexure-A compelling sugar-cane growers in the reserved area to supply to the factory every year 95 per cent of the sugar-cane grown by such growers by himself or through the cooperative Societies of which he is a member affects their fundamental rights guaranteed under Art. 19 of the Constitution. There is a further prayer in the petition to the effect that there be a direction to the 2nd respondent Ugar Sugar Works Ltd., a public limited company incorporated under the Indian Companies Act, 1956, to pay to them prices per metric ton of sugar-cane at the rate which some of the neighbouring factories close-by in the State of Maharashtra across the border are paying to their suppliers.

5. It would be convenient to dispose of the second prayer first. This court in exercise of its jurisdiction under Art. 226 of the Constitution cannot compel factory owners to obey its writs in matters relating to their trading activities with their suppliers of sugarcane. It is quite obvious that sugar is an essential commodity subjected to various types of control under the Essential Commodities Act and the Orders made thereunder. The petitioner has itself averred that the sugar-cane price is fixed by the Government of India in exercise of its power under sub-sec. 3 of the Sugar-cane (Control) Order, 1966. Therefore, whatever price is required to be paid in a given order for the supply of sugar-cane by the growers the 2nd respondent-factory is bound to pay that minimum price which the Government of India had fixed. In fact, there is no specific pleading that either the 2nd respondent factory has paid less and obtained sugar-cane or that the Government of India has fixed higher price than what the sugar-cane grower has been paid. In that view of the matter, the prayer, on the pleadings and the material placed before the Court cannot be granted much less examined in detail by this Court.

6. It is also necessary to notice that the 2nd respondent being a public limited Company is not amenable to the writ jurisdiction of this Court and therefore no direction may be given in regard to the price it has to pay for sugar-cane supplied to it by the growers in the area reserved for it.

7. The remaining contention relates to the validity of the order. Paragraph-4 of Sec. 4 of that order is as follows:

"(4) Fixation of quantity of sugar-cane to be supplied by the grower.

All the sugar-cane growers in the reserved area shall supply to the factory every year ninety five per cent of the sugar-cane grown by each such grower, by himself or if he is a member of a Co-operative Society of sugarcane growers operating in the reserved area through the society."

8. From the above it is seen that the grower is required to supply 95 per cent of the sugar-cane grown by him to the sugar factory to which a particular area is assigned in terms of paragraph-2 of the order. In paragraph-2 the words

"Factory", "From". "Schedule" are defined. Similarly, in paragraph 3 the crushing capacity of the factory is stated. Sub-paragraph 42) of paragraph-3 of the impugned order provides that the factory shall secure available quantity of sugar-cane against the determined crushing capacity in sub-para (1) of para-3 of the Order from the area specified in Schedule-I. Schedule-I to the Order provides that 2nd respondent-M/s Ugar Sugar Factory, Ugarkhurd in Belgaum District shall have the villages enumerated (in all 89) as the area reserved for that factory.

9. By additional documents filed with the leave of the court, the petitioner has brought to the notice that since the passing of the Order on 30th November, 1978, the area under sugar-cane cultivation has risen considerably. In fact, the case made out on those facts is that while approximately 8 to 10 lakh metric tons of sugar-cane is grown in the area of Athani Taluk, the crushing capacity of the sugar factory being not more than 4 lakh metric tons, the - restriction imposed prohibiting the growers from selling their produce elsewhere is an unreasonable restriction. The thrust of the argument is that the surplus of 4 to 6 lakh metric tons is not capable of being consumed by the Ugarkhurd Factory.

10. The Court cannot proceed on the assumption that the 89 villages enumerated in Schedule-I to the impugned order allocated to the 2nd respondent-factory produce 8 to 10 lakh metric tons of sugar-cane. The document on which reliance is placed is the proceedings of the Assistant Commissioner of Belgaum Sub-Divisi6n, Belgaum, who had occasion to convene a meeting of the representatives of the sugar factories in the area in question as well as the sugar-cane growers including the members of the petitioner Association to resolve what was really a law and order situation because the sugar-cane growers resorted to what is described as blocking the roads (rasta-roco) demanding that they be permitted to transport sugar-cane beyond the State borders and sell at a more profitable price to the sugar factories in Maharashtra. Reliance also is placed on the certificate issued by the Assistant Director of Agriculture, Athani in Belgaum District. That states, approximately based on the average production in the area 10,50,000 metric tons of sugar-cane is available in the Taluka for sugar-cane factories. But even it pre-supposes that there are other sugar-cane factories with varying crushing capacities which consume all the sugar-cane produced in the Athani Taluka.

11. It is not "the case of the petitioner Association that there are no other sugarcane factories in Athani Taluka with sufficient crushing capacity to off -take the sugar-cane grown in the Taluka. Therefore, it is not possible to come to the conclusion that the restriction imposed in any way prevents the growers from selling their surplus sugarcane.

12. In fact, the pleading is to the contrary. The pleading makes it clear that prices paid at the sugar factories in the neighbouring Maharashtra State situated on the other side of the border pay very higher prices and therefore the growers must have the liberty to sell at least 40 percent of their produce to the other factories outside the State and the remaining 60 percent to the 2nd respondent.

13. This is not the province of the Court to determine under the Sugar-cane Control Order. The authority to decide these questions is the government. The Government of Karnataka has decided to allocate certain areas to a particular sugar factory in the sugarcane belt of Belgaum District. It is presumed that they have acted on the relevant factors such as the number of factories situated, the crushing capacity and the need for constant supply of sugar-cane for the minimum crushing period that is essential to make a, sugar factory work competently producing sugar which cannot be denied to be an essential commodity.

14. An identical question arose for consideration before this Court in Writ Petitions Nos. 12619 of 1979 and connected matters. There, what was assailed was the area reserved for sugar factory in Kollegal Taluk in Mysore District, as is evident from paragraph-I I of the order of the learned single Judge of this Court. In the said writ petitions the order under challenge there provided for reservation of area for a factory or producer having regard to the crushing capacity of the factory, the availability of sugar-cane in the reserved area and the need f or production of sugar, with a view to enabling the factory to purchase the quantity required by it. The attack on the ground that the reservation was arbitrary and opposed to Art. 14, Art. 19 of the Constitution was repelled by the Court in the following terms:

"In the absence of express guidelines also, power being conferred on a. high authority like the Central Government or the State Government, cannot be struck down only on that ground as those authorities are expected to exercise their power for the purpose of the statuteI therefore reject this contention of the petitioners."

15. Similarly in paragraph- 13 discussing the effect of the notification issued by the Central Government under clause (3) of the 1966 Order fixing the minimum price for sugar-cane⁴ this Court held that we growers are likely to incur losses and have to forego their profits by not producing jaggery was not a ground with which they could challenge the 1966 Order.

16. In my view, the decision to which I have referred rendered by Puttaswamy, J., concludes the matter so far as this Court is concerned as the appeal filed against that order came to be dismissed by a Division Bench of this Court. Therefore, the petitioner cannot make a grievance of the reservation made in paragraph-4 of the impugned order. If at all if there are changes, I do mean material changes in the extent of the acreage under cultivation and the total production of the tonnage in the area with which we are concerned and the off-take or the capacity of the factories have, remained constant or in any event not exceeding 4 lakh metric tons, the proper course for the petitioner Association is to bring the same to the notice of the Government of Karnataka at the appropriate level and seek suitable revision of the percentage that is required to be supplied of the total produce. Such representation if properly made, this Court is confident that the Government will pay due attention and do what in the

circumstances would be the proper and right thing to do.

17. Subject to the above observation, I do not see any merit in this petition and "it is rejected But in the circumstances of the case there will be no order as to costs.

18. Learned High Court Government Pleader, Shri U. Abdul Khader, is permitted to file his memo of appearance within two weeks from today.

19. Petition dismissed.