

**(1978) 07 MAD CK 0016**

**In the Madras High Court**

**Case No : Writ Appeal No's. 92 and 93 of 1975**

Union of India and Another

APPELLANT

Vs

P. Maruthai Pillai and Another

RESPONDENT

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**Date of Decision : 04-07-1978**

**Acts Referred:**

Essential Commodities Act, 1955 — Section 3, 3(1)

**Citation : AIR 1979 Mad 207 : (1979) ILR (Mad) 426 : (1979) 92 LW 202**

**Hon'ble Judges : Nainar Sundaram, J;Ismail, J**

**Bench : Division Bench**

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## **Judgement**

Ismail, J.—These are two appeals directed against the order of Ramaprasada Rao, J. (as he then was) in WPs. 800 and 1099 of 1971, allowing the same on 12-10-1973. For the purpose of understanding the controversy that arises in the writ appeals, it is necessary to refer to certain facts. Sugar industry is a seasonal industry and almost the entire sugar is produced within a period of five to six months between December and April or May. To ensure equitable distribution of available supplies throughout the year, the sale of sugar by factories is regulated by monthly release in exercise of the powers conferred by Cl. 4 of the Sugar Control Order, 166, made under S. 3 of the Essential Commodities Act, 1955 (Central Act 10 of 1955) (hereinafter referred to as the Act). The policy of the Government with reference to the regulation to be imposed on the sale, distribution and price of the sugar differ from time to time depending upon the total acreage under sugarcane cultivation and the yield of sugarcane as well as quantity of sugar manufactured by the manufacturers. On the last occasion when control on the price and distribution of sugar was imposed was in April 1963, and this was on account of the fall in production of sugar and there was shortage in supply and it was with a view to ensure equitable distribution of available supply of sugar at fair price, and that control continued up to 22-11-1967. In August, 1967, the Government reviewed its policy with regard to sugar. At that time according to the All India Final Estimate for sugarcane for 1966-67, the extent of the area under sugarcane in 1965-66 which was 68.69 lakh acres came down

and as a result of the fall in area, the production was less and there was also a diversion of sugarcane for making ghur and khandsari. The production of sugar declined from 35.1 lakhs tonnes in 1965-66 to 21.5 lakhs tonnes in 1966-67. Taking into account the changed circumstances, the Government of India decided upon a policy of partial decontrol under which some quantity of sugar would be available to the domestic consumer at a controlled price leaving the other portion of the production for sale by the factories in the open market. In view of this changed policy, the Government formulated a particular scheme. One of the aspects of this scheme was to earmark a particular percentage of sugar manufactured by the factories for procurement by the Government itself for distribution among the public at a controlled price leaving the balance to the producers to sell the same in the open market. The percentage of sugar to be procured and the sugar to be sold in the open market by the factories varied, and as far as the years 1968-69 and 1969-70 were concerned, the percentage fixed for procurement was 70 while the other 30 percent was available for free market sale. The Government of India announced the policy for the year 1969-70 and the same was contained in a Press Note which was to the following effect:

"The question of sugar policy for the next year, i.e. 1969-70, was discussed at the Chief Ministers' Conference held on 27-9-1969. The consensus at the conference was in favour of continuance of the present policy of partial decontrol with percentage of levy and free sale quotas remaining unchanged at 70:30. This was announced by the Minister for Food, Agriculture, Community Development and Co-operation at the Press Conference convened immediately after the meeting.

After careful consideration of all the issues involved, Government have decided to continue the present policy of partial decontrol during the year 1969-70 which commenced from 1-10-1969. A quantity equal to 70 per cent of sugar produced by the factories from 1-10-1969 to 30-9-1970, will be procured from the factories at fixed levy prices for controlled distribution. The factories will be permitted to sell the remaining 30 per cent to the sugar produced in the free market subject to regulation of releases by Government as at present.

The levy prices of sugar will be fixed having regard to the minimum price of sugarcane already announced for the season, namely, Rs. 7.37 per quintal for a recovery of 9.4 per cent or less with 5.36 paise per quintal for every increase of 0.1 per cent for recovery above 9.4 per cent.

The announcement in regard to export of sugar will be made later."

2. Thus it will be seen that the 70 per cent sugar to be procured by the Government was popularly referred to as levy sugar and the 30 per cent of the sugar was referred to as free market sugar.

The Government implemented these policies from time to time through the statutory instruments of the Essential Commodities Act, 1955 and the Orders made by the Government thereunder and the directions issued by the

Government with reference to the said Orders as well as independently. The power of procurement referred to in the policy was exercised by means of issuing a direction under Sec. 3(2)(f) of the Act for time to time. Section 3(1) of the Act stated:

"If the Central Government is of opinion that it is necessary or expedient to do so for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, or for securing any essential commodity for the defence of India or the efficient conduct of military operations it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein." Sub-section (2) of S. 3 stated that without prejudice to the generality of the powers conferred by sub-section (1), an order made thereunder may provide for the matters enumerated therein, the matter enumerated in Cl. (f) of sub-sec. (2) of S. 3 being "for requiring any person holding in stock any essential commodity to sell the whole or a specified part of the stock to the Central Government or a State Government or to an officer or agent of such Government or to such other person or class of persons and in such circumstances as may be specified in the order."

3. There is no dispute that sugar is one of the essential commodities to which the Act applies. In addition, there is also as we pointed out already the Sugar (Control) Order, 1966, which replaced the Sugar (Control) Order, 1955. It is the power that is contained in the provisions of S. 3(2)(f) of the Act, that was resorted to for the purpose of giving directions to the manufacturers of sugar requiring them to sell a particular quantity of sugar to the Central Government or the State Government, etc., as referred to in that clause.

4. In the present cases, the two respondents herein are manufacturers of sugar and we are concerned with the sugar manufactured by them during the year 1969-70. Pursuant to the policy of the Government referred to above, directions were issued by the Competent Authority under S. 3(2)(f) of the Act, from time to time requiring the respondents herein to sell portions of the stock to the Government or to officers and organisations mentioned in S. 3(2)(f) of the Act. The complaint of the respondents was that though such directions were given by the Government requiring the respondents to sell sugar to certain persons or bodies, they did not lift the stock and therefore the unlifted stocks occupied a huge space in the godowns of the factories causing considerable inconvenience and monetary loss by way of the goods being stored and the possibility of the goods deteriorating in quality. The respondents also submitted that they had sold in the open market 30 per cent of the produce in the year in question as per the policy of the Government referred to above. However, what prompted the two respondents to come to this Court was the direction given by the authority under Cl. 5 of the Sugar (Control) Order, 1966, to sell certain quantities of sugar in the open market. These quantities with reference to which these directions were issued were the Central Government had earlier given a direction under Sec. 3(2)

(f) of the Act, but the allottees had not lifted the stock and therefore the stock continued to remain with the respondents. The respondents herein complain against such directions.

5. We may in this context refer to the specific case of the respondents in W.A. No. 93 of 1975 as set out in the affidavit filed in support of the writ petitions. According to the respondents by an order dated 20-1-1971, issued under Cl. 5 of the Sugar (Control) Order, 1966, the Central Government required the respondents in W.A. 93 of 1975 to sell in the open market a quantity of 470.2 tonnes of sugar out of the 1969-70 production and again on 20-2-1971, the Central Government gave a similar direction to the said respondents to sell 471.2 tonnes of sugar out of the 1969-70 production in the open market and a quantity of 5.7 tonnes of sugar out of the production of the year 1968-69. The grievance of the respondents was that they had already sold 30 per cent of their production in the open market as per the policy of the Government, and the Government had no right to call upon them to sell anything in excess of the said 30 per cent in the open market and the Government was bound to procure 70 per cent of the production as announced in the policy.

6. In fact, this grievance had another impact as well. At the relevant time, the excise duty payable in respect of sugar was 371/2 per cent. However, the Government had made a concession and reduced the rate of excise duty to 25 per cent in respect of the sugar covered by directions issued under Sec. 3(2)(f) of the Act. In view of this only, the respondents took up the position that the entire 70 per cent of the production of the respondents constituted what is popularly known as levy sugar subject to procurement under Sec. 3(2)(f) and therefore the Government had no right to compel the respondents to sell anything out of the said 70 per cent in the open market thereby indirectly compelling the respondents to pay a higher rate of excise duty at 371/2 per cent, while they were liable to pay only 25 per cent excise duty in respect of the sugar covered by the directions of the Government under S. 3(2)(f) of the Act. It is only on this basis, the prayer in W.P. No. 800 of 1971 giving rise to W.A. 93 of 1975, was for the issue of a writ of prohibition or any other appropriate order or direction against the Union of India and the Collector of Customs and Central Excise, Madras, prohibiting them from collecting excise duty in excess of 25 per cent on the sugar directed to be sold by the release orders dated 20-1-1971 and 20-2-1971. The prayer in W.P. 1099 of 1971 giving rise to W.A. No. 92 of 1975 was more or less general in terms, namely, for the issue of a writ of Mandamus or any other appropriate writ, order or direction to permit Messrs Aruna Sugars Ltd., Madras, whose managing director the petitioner in the writ petition was, to sell the unlifted quantity of levy sugar out of the production for the year 1969-70 lying with them by paying only 25 per cent excise duty.

7. It will thus be seen that the bone of contention in both the writ petitions was about the rate of excise duty payable by the respondents, the respondents' case being that when once the Government had announced a sugar policy of procuring

70 per cent of the production allowing for free market sale only 30 per cent the Government is entitled to collect excise duty at the rate of 25 per cent only on the 70 per cent of the production, whether the stocks were lifted by the allottees pursuant to the orders issued by the Government under S. 3(2)(f) of the Act or not, and the Government had no right to collect anything in excess of that 25 per cent with reference to the said 70 per cent of production. Accordingly, they contended that when the Government issued subsequent order directing the respondents in W.A. No. 93 of 1975 to sell certain quantities of sugar which originally formed part of the subject matter of the direction under S. 3(2)(f) of the Act, they acted illegally and by such illegal action, they cannot call upon the respondents to pay excise duty at 371/2 per cent.

8. Counter-affidavits were filed in both the writ petitions on behalf of the appellants in these appeals. It is not necessary to refer to the averments contained in the counter-affidavits because most of the facts are admitted. The admitted facts are (1) from time to time the Central Government issued directions under S. 3(2)(f) of the Act to the sugar manufacturers in question asking them to sell sugar to the Government or their agents of a specified quantity and within a specified period. It is pertinent to point out that every one of the directions issued under S. 3(2)(f) fixed a period of time within which the sugar had to be lifted, by the allottees; (2) In several cases, the allottees did not lift the sugar as directed by the Central Government and therefore such quantities of sugar remained in accumulation with the producers themselves thereby occupying a large amount of space in the godowns and causing loss in the form of the sugar being locked up without being disposed of. (3) In respect of the respondents in W.A. No. 93 of 1975, there were two orders of the Government issued under clause 5 of the Sugar (Control) Order, 1966 directing the respondents to sell part of the sugar so accumulated in the open market.

9. The question for consideration in such a context is whether such a direction was illegal and whether the respondents are entitled to ignore such a direction and contend that when once the Government announced the policy of procuring 70 per cent of the production and orders under S. 3(2)(f) of the Act had actually been issued covering 70 per cent of the production, the Government were entitled to collect excise duty with reference thereto only at the rate of 25 per cent and not at the rate of 371/2 per cent notwithstanding the fact that the sugar was sold in the open market.

10. We have so far referred to the fact and the contentions at the stage of the filing of the writ petitions. Now we shall have to refer to a subsequent event, namely, an interim order passed by this court which alone had ultimately influenced the learned Judge to allow the writ petitions in question,. That interim order was passed by the learned Judge himself on 8th April 1971, in W.M.P. No. 331, 597, 1170, 1600 and 1601 of 1971. The learned Judge referred to the facts of the case and observed that prima facie it appeared to him that it would be interdicting the free trade and therefore the freedom of the trade was affected.

After having expressed to, the learned Judge proceeded to state as follows-

"In this view of the matter, I am giving the following directions. No doubt, the learned counsel appearing for the Central Government, opposes any grant of an interim relief at this stage. But, as I am of the view that prima facie a fundamental right of a trader is affected, it is necessary that in the interests of justice the following directions be given. The writ petitioners in each of these writ petitions are allowed to sell that unlifted quantity of levy sugar for the sugar year 1969-70 (1st October 1969 to 30th Sept. 1970), but on conditions that at the time of clearing the same from the factory, the writ petitioners pay an excise duty of 25 per cent on such stock taken out from the factory and in addition give a bank guarantee for 121/2 per cent of the excise duty payable thereon. The usual procedure in the matter of lifting of the stock and the levy of excise duty shall be followed. This is an interim measure pending disposal of the writ petitions. As by the guarantee given by the Bank, the revenue to the State is safeguarded, I am of the view that this direction is essential as it sub-serves the interests of both the trade and the revenue. The excise duty shall be collected on the "levy price" and not on the tariff value as is done with reference to free sugar."

Pursuant to this interim order, the writ petitioners would appear to have disposed of the sugar. Finally the two writ petitions which have given rise to the writ appeals before us came to be disposed of by the learned Judge on 12th Oct. 1973. The learned Judge referred to his interim order and pointed out that the respondents herein had collected only 25 per cent excise duty and they had not collected 37 1/2 per cent excise duty from the purchasers. In this context, he looked into the accounts of the respondents themselves. After referring to these facts the learned Judge observed as follows-

"But the question, however, is whether the said sugar loses the stamp of levy sugar merely because it was sold under orders of court in the circumstances stated earlier. In my earlier order, in the writ miscellaneous petitions, I made it clear that the unfortunate situation was brought about by several allottees, particularly the various States in India to whom letters of allotment were issued by the Central Government from the petitioners' factories, but who did not clear the stock for reasons better known to them. When, therefore, the stock was mounting up by reason of the supervening production, it became necessary for the petitioners to come up to this court with the writ petitions and seek for interim directions as well. In the interim order, I made it clear that the petitioners were not in default at any time and that by reason of the letters or orders of allotment made by the Central Government, the portion of the sugar which was not lifted by the allottees got impressed with the character of levy sugar. Such a badge cannot easily be disclosed for no fault of the petitioners. I am of the view therefore that as the petitioners are not at fault and as the sugar in question had been appropriated, dealt with and treated by the petitioners as levy sugar, the subsequent treatment by them by selling it under orders of court

because of certain exigent circumstances would not take away or efface the badge of levy sugar which has got impressed in it by reason of the allotment orders of the Central Government. If, therefore, the petitioners did collect only 25 per cent as and towards excise duty when they dealt with such "appropriated sugar" as levy sugar, then it appeared to me there is a public duty on the part of the respondents not to demand the additional 12 1/2 per cent of excise duty on a bare assumption that the levy sugar dealt with by the petitioners lost such a character in the interim and such sales by the petitioners though under orders of court in the peculiar circumstances stated above, should be deemed to be ordinary sugar sold by the petitioners in the open market. When there is an avoidance of public duty, a writ of prohibition or Mandamus ordinarily will issue. In this case, the circumstances do warrant for the issue of the rule as prayed for by the petitioners. The learned counsel for the respondents does not seriously oppose the absolution of the rule nisi in the above circumstances."

It is the correctness of this order of the learned Judge that is challenged in the present writ appeals.

11. We are clearly of the opinion that the conclusion of the learned Judge is erroneous. The learned Judge assumed that there was a stamp or badge fixed on the 70 per cent of the sugar manufactured by the producers by virtue of the policy announced by the Government and that stamp or badge cannot be effaced or dislodged by any subsequent conduct on the part of the parties. In our opinion there is no such scope for thinking that the 70 per cent of the sugar acquired any distinct or distinguishing character from the other 30 per cent of sugar manufactured by the manufacturers. The policy of the Government announced earlier is being implemented through the statutory provisions contained in the Act. It is not obligatory on the part of the Government that they must procure 70 per cent of the sugar produced. It is certainly open to the government to change that percentage in the announced policy or not to procure any sugar whatever from any of the manufacturers. What the Government should do at a particular point of time will depend upon the circumstances prevailing at that time. The object of the partial decontrol was that the Government should procure at least a part of the sugar produced in the country to make that sugar available for distribution to consumers at reasonable prices. If the Government comes to the conclusion at any time that sugar is freely available in the market at reasonable prices without the Government intervening in that behalf, they were not bound to resort to the provisions contained in the Act and procure any part of the sugar whatever from the manufacturers. In this particular case, as we pointed out already, the case of the respondent as set out in the affidavits filed in support of the writ petitions proceeds on the basis that the Government having once announced their policy to procure 70 per cent of the sugar produced and to allow only 30 per cent of free market sale, they had no right whatever to call upon the producers to sell anything in excess of the 30 per cent in open market. In other words, the Government was bound to procure 70 per cent of the sugar produced by the manufacturers. As far as the present cases are concerned, we have

already referred to the fact that the Central Government had passed orders from time to time under S. 3(2)(f) of the Act, directing the producers to sell sugar by way of allotment to certain State Government or their agents. But only those agents did not lift the stocks. Certainly the failure on the part of these allottees to lift the stocks would cause inconvenience and create hardship to the respondents herein. But that is no reason to hold that the Government on that account were under no obligation to procure the entire 70 per cent of the stocks. Even in cases where the allottees had not lifted the stocks pursuant to the orders of the Government there had been re-allotment orders issued by the Central Government from time to time. From what we have pointed out already, the orders of allotment fixed a time for lifting of the stock, by the allottees, and once that time expired, naturally the allotment lapsed and the stock formed part of the general pool of the produce of the manufacturers. It is not as if the moment sugar was produced, 70 per cent gets separated from the other 30 per cent, and the said 70 per cent acquired an inflexible and indivisible character as a levy sugar, and such stamp or badge continues to be a permanent one irrespective of the manner in which that 70 per cent of sugar was dealt with subsequently. In fact, to construe the policy of the Government in such a manner will be unreal. There is nothing to show at what point of time this allocation of 30 per cent and 70 per cent should take place. Is one to wait for the entire sugar season to be over for the purpose of finding, out what the total production is and then making the allotment? Or is one to make the allotment out of every day's production or every month's production? We are referring to these features merely for the purpose of showing the unreality of the argument that the 70 per cent gets the stamp or acquires a badges of levy sugar permanent and perennial, and whatever the manner in which the same is disposed of, this stamp or badge continues.

12. To come to any such conclusion is to really ignore the actual statutory provisions in this behalf. Pursuant to the enabling provisions contained in the Act as well as the Sugar (Control) Order 1966, only, the Central Government went on giving directions regarding the allotment. It is equally with reference to the enabling provision contained in Cl. 5 of the Sugar (Control) Order, 1966, which reads as follows, that the directions dated 20-1-1971 and 20-2-1971, were given in the case of the respondents in W.A. No. 93 of 1975:

"The Central Government may, from time to time, by general or special order, issue to any producer or recognised dealer, or any class of producers or recognised dealers, such directions regarding the production, maintenance of stock, storage, sale, grading, packing, marking, weighment, disposal, delivery and distribution of any kind of sugar as it may deem fit."

These provisions being enabling provisions, it is certainly open to the Government not to give any such direction if they are satisfied that the public interest does not require the issue of any such direction. Under these circumstances, we are of the opinion that the contention of the respondents that

the Government was bound to allow the producers to sell only 30 per cent of the produce in the open market and they have no right whatever to require the producers to sell anything in excess thereof which excess will necessarily come out of the 70 per cent, is without any substance.

13. From what we have stated already, the bone of contention was really with regard to the rate of excise duty. There is no dispute whatever that under the Central Excises and Salt Act, as well as under sub-section (3) of S. 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (Act 58 of 1957), the rate of excise duty payable in respect of sugar was only 37½ per cent. However, the Government of India issued a notification on 1st May, 1970, to the following effect-

"In exercise of the powers conferred by sub-rule (1) of R. 8 of the Central Excise Rules, 1944, read with sub-s. (3) of S. 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (Act 58 of 1957), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue and Insurance) No. 18/69 Central Excises dated 1st March, 1969, the Central Government hereby exempts sugar falling under sub-item (1) of Item No. 1 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) and required by the Central Government to be sold under Cl. (f) of sub-section (2) of S. 3 of the Essential Commodities Act, 1955 (10 of 1955), from so much of the duty of excise and the additional duty of excise leviable thereon as is in excess of the duty and the additional duty calculated at 25 per cent and 5 per cent respectively, on the basis of the price determined by the Central Government from time to time, under sub-sec. (3-C) of S. 3 of the said Essential Commodities Act, as the price payable for such sugar to the producer thereof; Provided that the element of the duty and the additional duty, if any, added to the price aforesaid shall be deducted before calculating the duty and the additional duty on the basis of such price."

The question of 25 per cent excise duty arises only as a result of this notification of the Government of India. Since this notification referred to the sugar required by the Central Government to be sold under Cl. (f) of sub-section (2) of Sec. 3 of the Act, the respondents contended that since with reference to 70 per cent of the stock the Central Government had issued orders from time to time under S. 3(2)(f) of the Act, the excise duty payable in respect of that 70 per cent of the produce was only at the rate of 25 per cent notwithstanding the fact that the said stock was not sold to the allottees as directed by the Government. We are unable to hold that the said notification can have any such consequence. The moment the allottee did not lift the stock within the time provided for in the direction given by the Central Government under S. 3(2)(f), the allotment itself lapses and the stock with reference to which such an order was made becomes part and parcel of the general pool of sugar manufactured by the producer. Only when the allotment was given effect to, the Notification will become operative. The moment the allotment lapsed, the notification itself will cease to be of any

application to such lapsed part of the sugar. In view of this, we are of the opinion that the respondents in these appeals will not be entitled to put forward a claim that in respect of the unlifted part of the sugar covered by an earlier order of the Government u/s 3(2)(f) of the Act, they were liable to pay excise duty only at the rate of 25 per cent. In fact, the respondents in W.A. No. 93 of 1975 were expressly directed by the Government to sell the same in the open market because the stock had already ceased to be the subject-matter of the direction u/s 3(2)(f) of the Act, when the stock was not lifted within the period prescribed in the orders of the Government. In such a context, we are unable to hold that there is any public duty on the part of the appellants herein not to collect excise duty at 37½ per cent, but they had a public duty to collect excise duty at 25 per cent.

14. Once we reach this conclusion, namely, that the policy of the Government announced with regard to the percentage of procurement and free market sale of sugar was merely a declaration of the intention of the Government and as such cannot be enforceable in a court of law and that policy itself had to be enforced through the instrumentality of the provisions contained in the Essential Commodities Act, 1955, the learned counsel for the respondents sought to contend that the doctrine of estoppel may come into existence and prevent the Government from directing the producers to sell anything more than 30 per cent of the produce in the open market. We are unable to hold that such a plea has any substance. In the first place, no such plea of estoppel was put forward by the respondents in the affidavit filed in support of the writ petitions and they proceeded only on the basis that the very policy announced by the Government was itself the law and any act on the part of the Government calling upon the producers to sell anything in excess of 30 per cent in the open market was illegal. Secondly, we are clearly of the opinion that no person can found a right on any statement of policy made by a Minister of the Government or the Government and seek to enforce such a right in a court of law. From the very nature of the case, such a statement of policy is merely a statement of the intention of the Government which can be changed by the Government at any time when the Government is satisfied that such change is necessary in public interest. Therefore a mere statement made by the Government or a Minister of the Government cannot give rise to a cause of action to any citizen to found a right thereon and to seek to enforce such a right and that too under Art. 226 of the Constitution of India.

15. Apart from this, as far as this country is concerned, the latest decision of the Supreme Court has set at rest this controversy by holding that there can be no estoppel against any policy statement of the Government in the exercise of its sovereign State or executive functions. In *Excise Commissioner, Uttar Pradesh, Allahabad and Others Vs. Ram Kumar and Others*, , after elaborately considering the earlier decision of this Court, as well as the English decisions, the Supreme Court finally laid down as follows (at p. 2241):

"It is now well settled by a catena of decisions that there can be no question of estoppel against the Government in the exercise of its legislative, sovereign or executive powers."

In fact, the Supreme Court cited with approval the observation of the High Court of Jammu and Kashmir in *Malhotra and Sons v. Union of India*, AIR 1976 J&K 41 wherein it was held as follows (at p. 48):

"The courts will only bind the Government by its promises to prevent manifest injustice or fraud and will not make the Government a slave of its policy for all times to come when the Government acts in its Governmental, public or sovereign capacity."

16. In view of this position of law, the question of estoppel with reference to the sugar policy announced by the Government does not arise. Under these circumstances we allow the appeals and set aside the order of the learned Judge and dismiss the writ petitions. There will be no order as to costs in these appeals.

17. Appeal allowed.