
(2001) 01 SC CK 0083

In the Supreme Court Of India

Case No : Civil Appeal No's. 460, 461 and 4685 of 1997, 1639-45, 1727 and 4602 of 1999 and 932 of 2001 Arising out of SLP (C) No. 2251 of 1997, IA No's. 13-14 in CA No's. 3512-13 of 1997 and TP (C) No's. 648 and 649 of 2000

U.P. Coop. Cane Unions" Federation

APPELLANT

Vs

West U.P. Sugar Mills Association and Others

RESPONDENT

Date of Decision : 31-01-2001

Acts Referred:

Essential Commodities Act, 1955 — Section 3U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 — Section 16, 28U.P. Sugarcane (Regulation of Supply and Purchase) Rules, 1954 — Rule 96
Constitution of India, 1950 — Article 254

Citation : AIR 2001 SC 846 : (2001) AIRSCW 520 : (2001) 2 JT 477 : (2001) 1 SCALE 504 : (2001) 1 SCR 668 : (2001) 1 Supreme 584

Hon'ble Judges : V. N. Khare, J;K. G. Balakrishnan, J

Bench : Division Bench

Judgement

V.N. Khare J.-Leave granted in SLP (C) No. 22251 of 1997.

2. In this group of appeals, the questions that arise for decision are these:

(1) Whether the State Government is competent to fix State-advised price for purchase of sugarcane by an occupier of a factory over and above the minimum price fixed under clause 3 and additional price under clause 5-A of the Sugarcane (Control) Order, 1966 framed under the Essential Commodities Act, 1955.

(2) Whether the State or statutory authority under its regularity power conferred by the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953, Rules and Orders framed thereunder has an obligation to ensure proper price of the sugarcane supplied by the sugarcane-grower to an occupier of a factory and thus the authority is required to arrange a meeting of sugarcane-growers/societies and occupier of the factory for reaching an agreed price of the sugarcane.

(3) Whether the agreed sugarcane price as contemplated under sub-clause (3-A)

of clause 3 of the Sugarcane (Control) Order, 1966 is required to be entered into writing in Form B or Form C or it can be oral also or it can be culled out from the parchis (receipts) issued under Rule 96 of the U.P. Sugarcane (Regulation of Supply and Purchase) Rules, 1954.

3. Civil Appeal No. 460 of 1997, CA No. 461 of 1997 and SLP No. 22251 of 1997 arise out of judgment in Writ Petition No. 36889 of 1996 filed before the Allahabad High Court by the occupiers of the sugar factories who are respondents in these appeals. The respondents herein challenged the State-advised price fixed by the U.P. State Government for the crushing season 1996-97. The Division Bench of that High Court quashed the fixation of the State-advised price on the ground that the State Government does not possess any such power. Consequently, the writ petition was allowed.

4. Civil Appeal No. 1727 of 1999 arises out of judgment in Writ Petition No. 2086 (M/B) of 1997 filed by Mr V.M. Singh. The prayer in the writ petition was for enforcing the State-advised price fixed by the U.P. Government. That writ petition was allowed by the Division Bench of the High Court of Allahabad.

5. Civil Appeal No. 4602 of 1999 arises out of the judgment in Writ Petition No. 775 of 1997 filed by the appellant herein before the Allahabad High Court. In the said writ petition, the appellant challenged the recovery of State-advised price fixed by the U.P. Government. This writ petition was dismissed by the High Court.

6. Civil Appeal No. 4685 of 1997 arises out of judgment in CWJC No. 12717 of 1996 filed by the respondent sugar factories against the fixation of price of sugarcane by the Bihar Government. The said writ petition was allowed by the Patna High Court following the judgment of the Allahabad High Court in Writ Petition No. 36889 of 1996.

7. Before we take up the aforesaid questions, it is necessary to note a few facts:

The Central Government, in exercise of power under Section 3 of the Essential Commodities Act, 1955, framed an Order known as the Sugarcane (Control) Order, 1966 (hereinafter referred to as "the Central Order of 1966"). Clause 3 of the said Order provides that the Central Government, after consultation with the authorities, as it may deem 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. Sub-clause (3-A) of clause 3 of the Order provides for an agreed price for purchase of sugarcane to be paid to the sugarcane-grower. Clause 5-A further provides for additional price to be paid to the sugarcane-grower by an occupier of a factory. Prior to the issue of the Central Order, 1966, the U.P. Legislature enacted an Act known as the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 (hereinafter referred to as "the Supply Act, 1953") and in exercise of the power under Section 28-A of the said Act, the State Government framed rules which are known as the Sugarcane (Regulation of Supply and Purchase) Rules, 1954 (hereinafter referred to as "the Supply Rules, 1954"). Further, the State Government in exercise of

power conferred by Section 16 of the Supply Act, 1953 has framed the U.P. Sugarcane (Supply and Purchase) Order, 1954. For crushing year 1996-97, the U.P. Government fixed the State-advised price for purchase of sugarcane by the occupiers of the factories. This was challenged by means of two separate writ petitions before the Allahabad High Court. In the third writ petition prayer was made to enforce the State-advised price. In one writ, as stated above, the High Court held that the State Government has no power to fix the State-advised price and whereas in two other writ petitions it was held that agreed price was the State-advised price and, therefore, it is payable by the occupiers of the factories. It is in this way these matters are before us.

8. Learned counsel appearing for the appellants in CAs Nos. 460-61 of 1997 and SLP No. 22251 of 1997 argued that under the regulatory power conferred by provisions of the Supply Act, 1953, Rules and Orders framed thereunder the State Government is legally competent to fix the State-advised price and in any event of the matter the State or the statutory authority has an obligation to see that sugarcane-growers get proper and remunerative price of sugarcane and thus required to arrange a meeting of cane societies and occupiers of the sugar factories for arriving at an agreed price of sugarcane. In that event, the agreed price is the State-advised price for the sugarcane purchased by the respondents. Learned counsel referred to two decisions of this Court. One, in the case of Maharashtra Rajya Sahkari Sakkar Karkhana Sangh Ltd. v. State of Maharashtra¹ and the other in the case of State of M.P. v. Jaora Sugar Mills Ltd.² In Maharashtra Rajya Sahkari Sakkar Karkhana Sangh Ltd.¹ it was held that the State Government under the relevant bye-laws has power to fix the price of the sugarcane. In para 12 of the said decision, the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 was also referred but the said Act was not examined as to whether it empowers the State Government to fix the State-advised price over and above the price fixed by the Central Government under clause 3 and the additional price under clause 5-A of the Central Order, 1966. However, in para 21 at p. 499, the Bench made observations to the following effect: (SCC p. 499, para 21)

"The Central Government did not fix any maximum price obviously because the conditions in the agricultural sector differed from State to State. Therefore, it having fixed a minimum price expects the State to offer remunerative price to its cultivators. In a controlled economy the price fixation machinery is to be determined by the State Government or under the 1966 Order in the manner provided therein."

9. No doubt, this observation indicates that the State Governments are required to offer remunerative price to the sugarcane-growers but such power was not traced to any provisions of the Act.

10. In the case of State of M.P. v. Jaora Sugar Mills Ltd.² it was held that under the regulatory power, the State Government or the statutory authority has an obligation to ensure proper price of sugarcane supplied by the sugarcane-

growers to an occupier of a factory and, thus, the State Government has to ensure the meeting of the sugarcane-growers and occupiers of the factories and their association wherein proper price of sugarcane is agreed upon. This decision supports the contention of learned counsel for the appellants.

11. In Civil Appeal No. 1727 of 1999 which arises out of the judgment in Writ Petition No. 2086 of 1997, the High Court has held that the agreed price for purchase of sugarcane between the occupiers of the factories and cane-growers' society is the State-advised price and, therefore, the occupiers of the sugar factories are under an obligation to pay such price to the sugarcane-growers. In view of the decision in the case of *State of M.P. v. Jaora Sugar Mills Ltd.*² prima facie we do not find any infirmity in the decision of the High Court in Writ Petitions Nos. 2086 and 775 of 1997. However, Mr Shanti Bhushan, learned Senior Counsel and Mr K.K. Venugopal, learned Senior Counsel appearing for the respondents inter alia argued that there is no provision in the Act which empowered the State Government to fix the State-advised price for the sugarcane, that in case it is held that the State possessed the power to fix the State-advised price, the same is ultra vires the Central Act, that the State or statutory authority under its regulatory power cannot coerce or force the occupiers of the sugar factories to agree on dictated price of sugarcane supplied by sugarcane-growers to the occupiers of the sugar factories and that, the agreed price of sugarcane under sub-clause (3-A) of clause 3 of the Central Order, 1966 contemplates a voluntarily agreed price and not a price which is dictated by the State Government. Learned counsel strongly relied upon the decision of this Court in the case of *State of T.N. v. Kothari Sugars & Chemicals Ltd.*³ Para 6 of the said judgment runs as follows: (SCC p. 755)

"6. On a perusal of the relevant provisions of the Sugarcane (Control) Order, 1966, particularly clauses 3 and 5-A therein, it is clear that the total price of sugarcane fixed thereunder is the aggregate of the minimum cane price fixed under clause 3 and the additional cane price fixed under clause 5-A. Thus, unless there be an agreement between the grower and the purchaser for purchase of the sugarcane at a higher price, the obligation of the purchaser is to pay to the grower only the aggregate of the amounts fixed under clauses 3 and 5-A. In other words, under the statute there is no liability of the purchaser to pay to the grower any amount in excess of this aggregate amount. Thus, without any contractual or statutory basis fixing the sale price of sugarcane at an amount higher than the minimum cane price fixed under clause 3 and the additional cane price fixed under clause 5-A, any sum paid by the purchaser to the grower as advance prior to fixation of the additional cane price under clause 5-A cannot form part of the price of cane sugar."

12. This decision shows that apart from a minimum cane price fixed under clause 3 and an additional cane price fixed under clause 5-A, unless there is an agreement between the grower and the purchaser for purchase of sugarcane at higher price, there is no obligation on the part of an occupier of a factory to pay

any other price fixed by the State Government. This case helps the case of the respondents.

13. Mr Shanti Bhushan also referred to a decision of the Constitution Bench in *Ch. Tika Ramji v. State of U.P.*⁴ In this case, certain notifications issued under the provisions of the U.P. Supply Act, 1953 were challenged as being repugnant to the Central Act. The contention was that since the field relating to sugarcane was already occupied under Central legislation, the notifications issued under the U.P. Supply Act, 1953 are ultra vires. Dealing with that contention, this Court held that no question of repugnancy under Article 254 of the Constitution could arise as the Central and State Legislatures operate in different fields and, therefore, the impugned notifications are valid. On the strength of this decision, it was argued that since the power of fixation of minimum price of sugarcane is within the domain of the Central Government, the State Government under its regulatory power cannot fix the State-advised price for sugarcane.

14. Civil Appeal No. 4685 of 1997 arises out of judgment in Writ Petition No. 12717 of 1996 filed by the respondents herein before the Patna High Court. Shri Rakesh Dwivedi, learned Senior Counsel referred to the provisions of the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 (hereinafter referred to as "the Bihar Act") and the Rules framed thereunder and argued that the Act and the Rules empowered the State Government to fix the State-advised price over and above the minimum and additional price fixed by the Central Government under clauses 3 and 5-A of the Sugarcane (Control) Order, 1966. He further argued that the Bihar Act having received the assent of the President of India would prevail over the Central Order of 1966. Mr K.K. Venugopal, learned Senior Counsel appearing for the respondent sugarcane factories argued that there is no provision in the Bihar Act which empowers the State Government to fix the State-advised price over and above the minimum and additional price or agreed price and, therefore, the State-advised price of sugarcane fixed by the State Government is ultra vires. He further argued that in a legislation under concurrent field unless the power to fix the price of sugarcane is expressly conferred on the State Government, the said power cannot be inferred or implied in the provisions of the Act.

15. On a thoughtful consideration of the arguments of learned counsel for the parties, we find that there is a conflict between the decisions in *State of M.P. v. Jaora Sugar Mills Ltd.*² and in *State of T.N. v. Kothari Sugars and Chemicals Ltd.*³ which requires to be resolved. Both the decisions are by a two-Judge Bench. This Bench, being of an equal number of Judges, cannot overrule one or the other decision. We have also looked into the decisions of the High Courts taking a contrary view of the matter. Such dispute arises in each crushing season and it is in the interest of Indian economy that such a perpetual dispute be resolved finally by a larger Bench. We, therefore, refer this group of cases to a larger Bench of three Judges. Let the papers of these appeals be placed before Hon'ble the Chief Justice of India for appropriate orders.

16. Mr V.M. Singh referred to the agreement in Form C at p. 205 of the paper-book of Civil Appeal No. 932 of 2001 @ SLP (C) No. 22251 of 1997 and argued that the interim order passed earlier be modified. The relevant portion runs as follows:

"The first party agrees to sell during the season 1996-97 14 lakh quintals of sugarcane of the members of the society standing on 4888 hectares as detailed below with an approximate yield of 40 lakh quintals. To the second party at the minimum price notified by the Government from time to time, provided that the price payable by the second party to the first party shall not in any case be lower than that paid generally by the second party to other growers of the villages in which cooperative societies operate."

17. In view of the aforesaid recital in the agreement, we, in modification of the interim order, direct that sugarcane-growers/societies shall not be paid price of sugarcane lower than that paid generally by the occupiers of the factories to other growers of the village in which a cooperative society operates during pendency of the appeals.

In TPs (C) Nos. 648 and 649 of 2000

18. Issue notice.

19. In the meantime, further proceedings in WPs (C) Nos. 20134 of 1998 and 21 of 2000 pending before the Madras High Court shall remain stayed.