

PETITIONER:
MAHARASHTRA RAJYA SAHAKARI SAKHAR, KARKHANA SANGH LTD.& ETC.

Vs.

RESPONDENT:
STATE OF MAHARASHTRA & ORS.

DATE OF JUDGMENT: 27/04/1998

BENCH:
G.N. RAY, M. SRINIVASAN

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

SRINIVASAN. J.

Leave granted.

The appellants are aggrieved by the dismissal of their writ petitions by the High Court of Bombay in which the appellants had challenged the validity of the Maharashtra Sugar Factories (Reservation of Areas and Regulation of Crushing & Sugarcane Supply) (Amendment) October, 1997. This order was passed in exercise of the powers conferred by Paragraphs (a), (c) and (f) of sub-cl.(1) if Clause 6 and sub-cl. (a) of Clause 9 of the Sugarcane (Control) Order, 1966 read with Notification of Govt. Of India, Ministry of Food, Agriculture, Community Development and Corporation (Department of Food). No.GSR. 1127/ESS. Com. Sugarcane, dated 16th July 1966.

2. Sugarcane (Control) Order, 1996 was passed by the Govt. of India under section 3 of the Essential Commodities Act 1955. Clause 6 (a), (c) AND (f) thereof reads as follows:

" (a) reserve any area where sugarcane is grown (hereinafter in this clause referred to as reserved area) for a factory having regard to the crushing capacity of the factory, the availability of sugarcane in the reserved area and the need for production of sugar, with a view to enabling the factory to purchase the quantity of sugarcane required by it;

(b) *****

(c) fix, with respect to any specified sugarcane growers or sugarcane growers generally in reserved area, the quantity or percentage of sugarcane grown by such grower or growers as the case may be, is a member of a cooperative society of sugarcane growers operating in the reserved area, through such society, shall

supply to the factory concerned:

(d) *****

(e) *****

(f) prohibit or restrict or otherwise regulate the export of sugarcane from any area including a reserved area) except under and in accordance with a permit issued in this behalf."

Clause 11 of the said Order enables the Central Government to direct by Notification in official gazette that powers conferred upon it by that order shall be exercised also by any officer or authority of the Central Government or a State Government or any officer or authority of the State Government subject to such restrictions, exceptions, conditions, if any, as may be specified in the direction. In exercise of the said power under clause 11, the Central Government issued a Notification dated 16th July 1966 in the following terms:

"N O T I F I C A T I O N

New Delhi, the 16th July, 1966

G.S.R. 1127/Ess. Com./Sugarcane

:- In exercise of the powers conferred by clause (11) of the Sugarcane (control) Order, 1966 and in supersession of the notification of the Government of India in the late Ministry of Food and Agriculture (Department of Food) No. G.S.R. 263/Ess.com./Sugarcane dated the 20th February, 1964 the Central Government hereby directs that powers conferred on it by clauses 6,7,8 and 9 of the said Order shall be exercisable also by the State Governments of Andhra Pradesh, Assam, Bihar, Gujrat, Kerala, Madhya Pradesh, Madras, Maharashtra, Mysore, Orissa, Punjab, Rajasthan, Uttar Pradesh, and the Lieutenant governor of Pondicherry within their or , as the case may be, his respective jurisdiction.

[No.2(6)/66-S.Py]

K.L. PASRICHA, JT. SECY."

3. Thus the power conferred on the Central Government by Clause 6 of the Sugar (Control) order, 1966 was exercisable also by the State Governments mentioned in the aforesaid Notification which included the State of Maharashtra. In 1984, the State Government passed the Maharashtra Sugar Factories (Reservation of Areas and Regulation of Crushing & Sugarcane Supply) Order 1984. The necessity for passing the said order was set out in detail in the preamble to the order itself. It is unnecessary to reproduce the same here.

4. Clause 2(1) of the said order defines a 'reserved area' as the area reserved for factory as specified in the schedule pertaining to that factory. Clauses 3 and 5 thereof are in the following terms:

"3. Reservation of areas - (1)

Having regard to the crushing capacity of sugar factories and, the yield of sugarcane in the reserved areas, and the need for

production of sugar, the area as specified in each of the schedules is hereby reserved for the factory mentioned in that schedule, with a view to enabling it to purchase the quantity of sugarcane required by it.

(2) Subject to the provisions of clauses 4 and 5 of this order, no sugar factory shall purchase cane or accept supplies of cane from cane growers, except from the area reserved for that factory.

5. Regulation of Supply of Sugarcane- (1) A permit Officer may allow a sugar factory to purchase cane or to accept supplies of cane from cane growers from areas other than the area reserved for it under clause 3 if he is satisfied that any of the following circumstances exist namely:-

(a) In the event of production of cane in the area reserved for the factory being not adequate for enabling it to reach optimum level of crushing;

(b) In the event of surplus production of cane in the areas reserved for other factories which those factories are not able to crush during the crushing season.

(c) In the event of cane grower or cane growers from the area reserved for a particular factory declining to supply cane to the said factory on account of any of the following reasons, if found justified by the Permit Officer:-

(i) Non-payment or late payment or cane price by the sugar factory; or

(ii) Non-fulfilment of any of the obligations by the sugar factory arising out of agreement between the cane grower or cane growers and the sugar factory; or

(iii) Discrimination by the sugar factory in harvesting of cane and thereby causing loss to the cane grower or the cane growers:

Provided that before passing any order under this sub-clause, for any of the reasons, the Permit Officer shall give the parties concerned a reasonable opportunity of being heard in person or through the authorised representative."

5. The validity of the said order of 1984 was challenge in the High Court of Bombay. a Full Bench of the Bombay High Court disposed of the proceedings with certain directions to the State Government in its judgment dated 23.9.1988. That judgment was the subject-matter of appeals in this Court in Civil Appeals No.522 of 1989 etc. etc. - Maharashtra Rajya Sahkari Sakkar Karkhana Sangh Ltd. & Ors.

Versus State of Maharashtra & Ors. This court by its judgment dated April 18, 1995 set aside the directions given by the Full Bench Of the High Court and upheld the validity of the order of the State Government. The judgment is reported in 1995 Supp. (3) S.C.C. 475. In Paragraph 2 of the judgment the directions issued by the Full Bench of the High Court and the reasons thereof were set out as follows:

"2. The directions issued by the Full Bench are as under:

"We are therefore of the view, that unless provisions for the following are made in it, the State Order will not be valid-

(i) The sugarcane-growers who are not members of the factory or factories to which they are required to supply to which they are required to supply their sugarcane shall be paid for the sugarcane supplied by them the price sugarcane supplied by them the price calculated at the market rate prevailing in the locality at the date of the sale;

(ii) The market rate may be as agreed between the parties, namely, the sugarcane-grower and the factory or factories concerned. If there is any dispute over it, the same should be resolved by an independent authority which may be created under the Order such as the one under clause 12 of the present Order. The authority concerned should decide the dispute expeditiously after hearing the parties and by a speaking order;

(iii) No unauthorised deductions on any account should be made by the factory from the price to be paid to the sugarcane-grower without his consent. The State Order should provide for a machinery similar to the above to hear and grant to the sugarcane-grower, expeditious relief if he has any complaint in that behalf."

The reasons for these directions were twofold, one the non-members were not bound by the price fixed under bye-laws framed under the Cooperative Sugar Act and other that there was no machinery in the zoning Order issued by the State Government to hear the non-members before the price fixed. Before examining whether these reasons are well founded in law leading to the impugned directions it is necessary to narrate in brief the necessity which impelled the central Government to grant protection to sugar industry and consequently to control the supply and distribution

of the sugarcane without sacrificing the interest of the cane-grower."

After referring to Clause 5 of the State Government's order, this Court said in paragraphs 36, 37 & 38 as follows:

"36. Clause (5) prescribes the situations in which one sugar factory will be permitted by the prescribed authority to purchase sugarcane from the zone of another sugar factory. It does not provide for the cane-grower seeking a permit for sale of his cane to another sugar factory (than the factory within whose zone he may be situated) even if any or all the conditions prescribed in the clause are satisfied. Take a case where a sugar factory indulges in all the three irregularities mentioned in sub-clause (d) of clause (5), viz., it does not pay the price of cane at the proper time, it does not adhere to the agreement it has thereby causing loss to the cane-growers - even then the cane-grower cannot apply for permit to sell his cane to whomsoever he likes. All that probably he can do is to complain. But he will get some relief only when there is another factory (which, of course, has its own zone) which is prepared to purchase cane from this zone and applies for permit to the Permit Officer to purchase cane from this zone. If it does not so apply, the grower within the first zone is helpless. That is not being fair and just to the growers. It is, therefore, necessary that the state Government may suitably amend the Zoning Order so as to provide that in a case where any of the three circumstances mentioned in clause 5(d) are present it would be open to the cane-growers to apply to the specified officer for permission to supply his cane outside the zone. In such an event, it may be open to the officer to designate the factory to which the grower should sell his cane ensuring that the grower gets a price which is not less than the price obtained in his zone.

37. The State Government would be further well advised to get the matter thrashed out, before the next crushing season commences, by an Expert Committee comprising of economists and financial experts well versed in price fixation, particularly in agricultural sector. This exercise has become

imperative after the enforcement of Zoning Order. In fact when Zoning Order was introduced the State at that time should have got these aspects examined. However, the price equation since 1984 has undergone tremendous upsurge. the escalation is manifold. Benefit of higher price of sugar must percolate to growers as well. Therefore. the Committee may examine -

(a) If the fixation of State Advised Price Uniformly for the entire State as it is being done in other States, or at least separately for different zones, as the normal recovery in the zones varies, would be more feasible;

(b) If the additional price worked out in the manner indicated in Schedule II of Control Order of 1966 is more advantageous and beneficial to the growers. If it be so it may opt for the same as it would avoid tedious exercise by the Ministerial Committee and have the benefit of uniformity;

(c) The Committee may further examine whether Rs.600 which has been paid by the factories to the non-growers under interim order passed by this Court would not be a reasonable minimum price for 1995-96 and may furnish the basis for fixation of price for future years;

(d) It may also suggest ways and means for improving yield by the sugar factories and reducing overhead expenses and eliminating, possible paper loss;

(e) It would further be in the interest of the Government to ask the Committee to examine if the shortcomings pointed out by the Full Bench in other regard can be rectified and rationalised; and

(f) The Committee may examine whether Bye-law 65 should be applied to non-members or not.

38. Although the price fixation has not been found to suffer from any infirmity yet due to passage of time, nearly eight or nine years, since this price fixation was challenged and with rise of price all around it appears expedient to dispose of these appeals with following directions to ensure smooth functioning both for the past and future:

(i) The directions of the Full Bench in para 25 of the judgment shall stand set aside.

(ii) The State Government may

take appropriate steps to amend clause (5) of the Zoning Order so as to protect the cane-growers.

(iii) The Government may appoint a Committee of Experts to study and examine the price structure in the light of what has been stated earlier.

(iv) Even though the order issued by the State Government determining price for each factory is upheld but since in consequence of the order passed by the High Court an interim order was granted by this Court and the factories were directed to pay Rs.600 to the Cane-growers and they were directed to furnish bank guarantee for Rs.145 it is directed that the amount paid by the factories shall not be liable to recovery from the cane-growers. But the bank guarantee furnished by the appellants or sugar factories shall stand discharged.

(v) It is made clear that the direction not to recover Rs.600 from non-growers would not entitle any member of the cooperative society or the cooperative society itself to claim that it was liable to be paid Rs.600 for its cane during the years in dispute."

6. The State Government appointed an Expert Committees as directed by this Court but the said Committee did not go into the aspect of zoning and confined itself to the price of sugarcane. There was an agitation by the farmers in the State according to whom the Government order of 1984 had led to an unsatisfactory situation warranting an amendment thereof. The State Government appointed a Committee on 6.1.1996 to take a decision on zoning. The Committee was headed by the Deputy Chief Minister of the State. Based on the recommendations made by that Committee, the State Government passed the impugned order amending the order of 1984 by introducing certain provisos to Clause 3(2) of the order of 1984. The same reads as follows:

"In Maharashtra Sugar Factories (Reservation of Areas and Regulation of Crushing and Sugarcane Supply) Order, 1984, -

(i) in clause 3, to the condition No. (2), the following provisos shall be added:

Provided that in case of a Cooperative Sugar Factory, the cane-growers who are not member of the Cooperative Society, shall be free to supply their cane to any factory of their choice;

Provided further that a member of a Cooperative sugar factory shall be bound to supply sugarcane to that Cooperative sugar factory in the ratio of shares held by him and area under sugarcane as per the

bye-laws of the Co-operative sugar factory and he will be free to supply excess cane, if any, to any factory of his choice be entering into agreement or contract to that effect:

Provided also that the Non-members cane growers in case of a Cooperative sugar factory and cane-growers in case of other sugar factories shall be free to their sugarcane to any factory of their choice by entering into agreement or contract to that effect. Same provision will apply to excess sugarcane or the member of Cooperative Sugar factories:

Provided also that if any cane-grower fails to enter into such agreement for supply of his sugarcane, responsibility of disposal of such cane shall be entirely his own. There shall be no responsibility on any sugar factory, Cooperative or otherwise or on the State Government, for crushing of any such cane."

7. It is the aforesaid amendment which is attacked by the appellants. The High Court dismissed the writ petition of the appellants observing that they did not find that the impugned order was in any way illegal or unreasonable and that the order would appear to ensure better sugarcane price to the farmers who are not members of any Cooperative sugar factory.

8. Before us, Mr. F.S. Nariman, learned senior counsel for the appellants has advanced three contentions:

The first contention is that the State Government being a delegatee from the Central Government under the Notification dated 16th July 1966 is not empowered to pass an order inconsistent with the Sugar (Control) Order of 1966 passed by the Central Government. Our attention is drawn to Section 6 of the Essential Commodities Act and it is contended that the Sugar (Control) Order of 1966 being one under Section 3 of the said Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than that Act or any instrument having effect by virtue of any enactment other than that Act. It is argued that the impugned order is in exercise of the power conferred under clause 6 (1) of the Sugar (Control) Order, 1966 read with the Notification dated 16th July 1966 and it cannot therefore run counter to sub-clause 2 of Clause 6 of the Sugar (Control) Order of 1966. The said Clause is in the following terms:

"Every sugarcane grower, sugarcane growers cooperative society and factory, to whom or to which an order made under paragraph (c) of sub-clause (1) applies, shall be bound to supply or purchase, as the case may be, that quantity of sugarcane covered by the agreement entered into under the paragraph and any wilful failure on the part of the sugarcane grower, sugarcane

grower's cooperative society of the factory to do so, shall constitute a breach of the provisions of this order:

Provided that where a default committed by any sugarcane growers' cooperative society is due to any failure on the part of any sugarcane grower, being a member of such society, such society shall not be bound to make supplies of sugarcane to the factory to the extent of such default."

According to him the impugned amendment is contrary to the above clause.

9. We are unable to accept this argument of learned senior counsel. Clause 6(1) only prescribes the matters with reference to which the Central Government may pass orders by notifying in the official gazette. By virtue of the Notification dated 16.7.66, the State Government is also empowered to do so. Sub-cl.(2) of Clause 6 of the Sugar (Control) Order 1966 is dependent upon an order made under paragraph, (c) of sub-cl.(1) of Clause 6. Admittedly there is no order passed by the Central Government under Clause 6(1) (c). Such an order was made by the State Government in 1984 as referred to by us earlier. The said order of 1984 is amended by the present impugned order of the State Government. It is not contended before us that the State Government has no power to amend the order of 1984 or that the power delegated by the Central Government by the notification dated 16.7.1966 got exhausted with the passing of the order of 1984 and thereafter the State Government had no power to issue another order. Hence, there is no merit in the contention that the State Government has no power to pass the impugned order.

10. There is also no merit in the contention that the impugned order is in conflict with the sugar (Control) Order, 1966 issued under Section 3 of the Essential Commodities Act. As pointed out already the said order does not by itself make any provision for the matters set out in Clause 6(1). Hence the first contention is rejected.

11. The second contention is that the State Government has exercised its power arbitrarily and discriminated against the factory owners. According to learned counsel the various observations made by this Court in its judgment dated April 18, 1995 while upholding the Government Order, 1984 have been completely ignored by the State Government and that the Expert Committee appointed pursuant to the direction given by this Court has not made any recommendation for the present amendment. It is also contended that another Committee appointed by the State Government had time till 30.8.1997 but the impugned order was passed even in April without waiting for the report of the second Committee. We are unable to see any merit in this contention. We have already referred to the circumstance that the Expert Committee appointed pursuant to the directions given by this Court in the judgment dated April 18, 1995 had not considered the aspect of zoning and had confined itself to the price of sugarcane. The present amendment was made pursuant to the suggestions made by the Committee appointed by the State Government on 6.1.1996. The reasons for the present amendment as suggested by the Committee are set out in the counter-affidavit filed by the State Government as follows:

"REASONS FOR AMENDMENT OF

ZONING ORDER 1984

In the background of the aforesaid facts it was necessary for the State Government to protect the interest of the members and non-members cane growers by permitting them to sell their sugarcane outside the zone of the factory so that they could get the most remunerative prices for his sugarcane. It was necessary to do so as it was found that :

1. The factories neglect non-members totally in the season when the cane is in excess than their capacity.

2. In this situation even the members are restricted to the extent of their shares.

3. The large difference in the cane price within the same village in two different factories goes up to Rs.300 per metric ton (R-7).

4. the amendment is only an extension to the earlier zoning order 1984, clause 5(1) (d) (para 50) .

5. The failure of the factories to enroll non-members for political reasons and also on account of the membership granted in favour non-cane growers.

6. Non-members is deprived of the facilities granted to the members i.e. supply of seeds, fertilizers, implements, incentives to drip and sprinkler irrigation, credit facilities and supply of sugar at concessional rate.

7. The alarming drop of sugarcane cultivation from 1995-96 to 1997-98 crushing season from 560 lakh M. T. to 312 lakh M.T.

8. The expected sugarcane production in India in the year 2000 will be 2000 lakh M.T. and Maharashtra is expected to grow about 800 lakh M.T.

9. There is a trend to divert from sugarcane to other crops like soyabean, cotton and horticultural crops which is 100% subsidy programme of the State. The area has gone up under horticultural development by nearly five times (para 15)

10. The nearly 90% contribution is by the State Government to these factories (para 5).

11. Large scale mismanagement of the sugar factories leading to low cane price and drop in cane cultivation (Para 13).

12. Zoning has not yielded desired results during the last 13 years."

12. In view of the above, it is not possible to accept the contention that the State Government has acted arbitrarily in amending the order of 1984. Nor is there any discrimination against the factory owners. In fact, this Court has in its judgment dated April 18, 1995 taken note of the plight of the growers of sugarcane and directed the State Government to take appropriate steps to amend Clause 5(1) of the Zoning Order. (see paragraphs 37 & 38 of the judgment already quoted). The State Government has instead of amending Clause 5 amended Clause 3(2) in order to improve the position of growers and in particular those who are not members of cooperative societies.

13. The third contention is that the amendment is wholly unreasonable and it will put an end to the cooperative movement. In support of this contention, reliance is placed on the following observation made by this Court in Paragraph 30 of its judgment dated April 18, 1995:

"30. The dual pricing system, one, for members and other for non-members or the option to non-members to sell to the factory of their choice may be negative of the zoning concept and may affect the cooperative movement in the State. Dr. Singhvi may be right that even before zoning Order was issued the Cooperative movement was there and the benefits that a member of the society derives may not result in affecting the system largely but any policy which has the tendency of shaking the system rudely must be avoided."

It is submitted that the present amendment has the effect of practically annulling the cooperative system.

14. We are unable to accept this contention. We do not find any justification in the facts and circumstances of the case for the contention that the cooperative system would be affected by the present amendment. We find that it is a balancing act on the part of the State Government to protect the interests of farmers who are not members of cooperative societies. After the passing of the 1984 order it has been found by the State Government that the provisions thereof could not enable the Government to achieve the objects with which it was passed. The counter-affidavit filed by the State Government has set out in detail the various circumstances which necessitated the State Government to re-consider the zoning order of 1984. Our attention has also been drawn to the counter-affidavit filed by the Govt. of India in which the stand taken by the State government has been fully supported. Paragraph 9 of the said counter-affidavit reads as follows:

"9. I further submit that the intention of Zoning or reserving cane areas for each sugar factory is not to introduce any monopoly to any sugar factory but only to sub-serve to the interest of the farmers, sugar-factories and consumers at large both at times of shortage of cane production and in years of surplus.

I further submit that the Government of Maharashtra may be allowed to operate the order dated

19th November, 1997 till the report of the high Powered Committee set up by the Government of India Under the chairmanship of Sh: B.B. Mahajan to enquire into various legislations relating to the Sugar Industry in India including the fixation of Statutory minimum Price of cane is received and a decision is taken by the Government in the matter."

15. It is also pointed out to us that the impugned amendment is pursuant to a policy decision of the State Government to protect the interests of the farmers on the one hand and the cooperative societies on the other. Nothing has been placed on record to show that the impugned order is vitiated by mala fides. In such circumstances. It is not possible for this Court to interfere with the order issued by the State Government. We do not also find anything unreasonable in the impugned amendment.

16. In the result, we agree with the views expressed by the High Court and dismiss the appeal.

17. The transfer petitions are for transferring proceedings pending on the file of the High Court in order to be heard along with the above appeal. We do not find any necessity to withdraw those proceedings to this Court. Now that we have disposed of the appeal in the above manner, the High Court may dispose of the proceedings pending before it in accordance with this judgment.

18. The Civil Appeal and the transfer petitions are dismissed. There will be no order as to costs.