PETITIONER:
H.S.S.K. NIYAMI AND ORS.

Vs.

RESPONDENT:
UNION OF INDIA AND ANR.

DATE OF JUDGMENT21/08/1990

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
KASLIWAL, N.M. (J)

CITATION:
1990 AIR 2128 1990 SCR (3) 862
1990 SCC (4) 516 JT 1990 (3) 579
1990 SCALE (2)286

ACT:
Essential Commodities Act, 1955/Sugar (Control) Order, 1963: Section 3(3C)/Clause 6 and Notification No. GSR No. 463 dated 24.3.1966--Constitutional validity of Section 3(3C)--Price fixation-Zoning--Whether legislative policy--Whether individual notice of representation/hearing necessary before placing a party in a particular zone--Absence of such opportunity--Whether violative of principles of natural justice.
Constitution of India, 1950: Article 31C--Validity of Section 3(3C) of Essential Commodities Act, 1950.

HEADNOTE:
The Sugar Inquiry Committee appointed by the Government of India recommended five zones for the fixation of ex-factory prices of sugar, including Zone No. 1 consisting of factories in Maharashtra, North Mysore etc. Accepting the recommendation, the Government of India issued notification in GSR No. 463 dated March 24, 1966 and the factories were specified in Schedules 2 & 3 annexed thereto. The appellants' factories located in North Mysore, were included in Zone No. 1.
The appellants filed writ petitions in the High Court assailing the constitutional validity of Section 3(3C) of the Essential Commodities Act, 1955 and the Notification dated March 24, 1966, and praying for a direction to the respondents to include the appellants' factories in Zone No. 2 consisting of South Mysore, South Andhra Pradesh and Orissa and to fix the price at Rs. 161 per quintal for the sugar manufactured by the appellants' factories. The writ petitions were dismissed by the High Court.
In the appeals before this Court, on behalf of the appellants it was contended that the appellants' factories were part of the entire State as was notified preceding the notification, that factors like price of sugarcane, taxes, duties, sugar recovery percentage, labour charges, cost of production or fair return to the produce were same or similar in the entire State but due to the notification, which included the appellants in Zone No. 1, they were put to huge losses, and that the appel-
863

lants were entitled to a notice and hearing before placing them in Zone No. 1 and clubbing with other factories in the State of Maharashtra, etc. was uneconomical and kept the appellants under loss and therefore, it was violative of principles of natural justice.

Dismissing the appeals, this Court,

HELD: 1. The Essential Commodities Act, 1955 having received the protective umbrella of Article 31C of the Constitution, read with 9th Schedule, Item No. 126, Section 3(3C) of the Act cannot be held to be ultra vires of the fundamental rights enshrined under Article 19(1)(g) and right to property under Article 19(1)(f) as was available in the year 1968. Moreover, it is covered by a recent decision of this Court in M/s. Shri Sitaram Sugar Company v. Union of India & Ors., [1990] 3 SCC 223. Therefore, the point is no longer resintegra. Section 3(3C) is constitutionally valid and unassailable. [865G-H; 866A]

2.1 The fixation of the price and zoning are integral scheme of the notification; without placing the factories in the appropriate zone based on agro-climatic and other economic considerations the proper price fixation cannot be made. So, both the factors are part of the policy decision by the government in exercise of the statutory powers. This decision is based on the recommendation made by the Sugar Commission consisting of experts in the field of agro-economics who after exhaustive study and consideration of the relevant material placed before it made the recommendation. Thereby it assumes the character of legislative policy. It does not concern itself with an individual case. Once it is concluded that the zoning system is an integral part of the price fixation of the sugar produced by the factories in a particular zone, it is legislative in character and no individual sugar factory is entitled to a notice and hearing before placing the particular. factory or factories in a particular zone. Moreover, the Sugar Commission heard the persons desired to be heard and considered the representation and material produced. At the stage of notification, the question of further representation or hearing does not arise nor a feasible exercise. It is for the Government to accept or reject or modify the recommendation made by the Commission. [871A-C; 872D-E]

M/s. Shri Sitaram Sugar Company v. Union of India & Ors., [1990] 3 SCC 223; Saraswati Industrial Syndicate Ltd. etc. v. Union of India, [1975] 1 SCR 956; Prag Ice & Oil Mills & Anr. etc. v. Union of India, [1978] 3 SCR 293; Laxmi Khandsari etc. etc. v. State of U. P. & Ors., [1981] 3 SCR 92 and Union of India & Anr. v. Cynamide India
864
Ltd. & Anr., [1987] 2 SCC 720 at 734 & 735, relied on.

Anakapalle Coop. Agrl. & Industrial Society Ltd. etc. etc. v. Union of India & Ors., [1973] 2 SCR 882, referred to.

Joseph Beauharnais v. People of the State Illinois, 96 L.Ed. 919 at 930, referred to.

Thus, zoning is a legislative act and policy. The appellants are not entitled to individual representation and notice before placing them in a particular zone. [872E]

2.2 As regards right to hearing for fixation of prices, fixation of price for Sugar is a legislative policy and principles of natural justice would not apply. [867E]

M Is. Shri Sitaram Sugar Company v. Union of India & Ors., [1990] 3 SCC 223, relied on.

2.3 Some loss may be caused to individual factory but the price fixation cannot be made unit-wise and it is not practicable to make unit as a base to fix the price or to

place in a particular zone. [872H]

Anakapalle Coop. Agrl. & Industrial Society Ltd. etc. etc. v. Union of India & Ors., [1973] 2 SCR 882, relied on.

2.4 In an individual case of administrative action if no counter affidavit is filed, an adverse inference can be drawn and relief moulded as per given situation but this Court cannot interfere with the legislative policy of zoning particular factories merely because the State has omitted to file counter affidavit denying the allegations of cost structures and the consequential loss that the appellants are being put to. [872G-F]

JUDGMENT:

CIVIL APPELLATE JURSIDICTION: Civil Appeal Nos. 154 & 155 of 1974.

From the Judgment and Order dated 19.4.1973 of the Mysore High Court in W.P. Nos. 356 and 1215 of 1968.

S.S. Javeli and B.R. Agarwala for the Appellants.

N.S. Hegde, Anand Haksar and Mrs. Sushma Suri for the Respondents.

865

The Judgment of the Court was delivered by

K. RAMASWAMY, J. These two appeals, on certificate under Article 136 of the Constitution, are by two sugar factories situated in Northern part of Mysore now Karnataka State. The appellants filed writ petitions under Article 226 of the Constitution in the High Court of Mysore at Bangalore assailing the constitutional validity of Section 3(3C) of the Essential Commodities Act, 1955 (In short 'the Act') and the Notification dated March 24, 1966. It was prayed inter alia that a writ or order in the nature of Mandamus be issued directing the respondents to include the petitioners' factory in Zone No. 2 and to fix the price at Rs.161 per quintal for the sugar manufactured by the petitioners' factory.

The Writ Petitions were dismissed by the High Court and the appellants in these circumstances have approached this Court challenging the Judgment of the High Court. The material contentions raised by the appellants in the affidavit and adumbrated in the grounds of appeal in this Court are that the appellants' factories are part of the entire State of Mysore (now Karnataka) as was notified preceding the impugned notification. The factors like price of sugarcane, taxes, duties, sugar recovery percentage, labour charges, cost of production or fair return to the produce are same or similar in the entire State but due to the impugned notification by including in Zone No. 1 the appellants are put to huge losses.

The country was divided into five zones. Zone No. 1 consists of all the factories in Maharashtra, Gujarat, North Mysore, North Andhra Pradesh, Zone No. 2 consists of all the factories in Orissa, rest of Andhra Pradesh, South Mysore (rest of Mysore), Madras, Pondicherry and Kerala. On account thereof the appellants are stated to be subjected to heavy losses. The details have been mentioned in the affidavit and the grounds of appeal but for the purpose of disposal of the point involved in the appeals, it is not necessary to adumbrate all the material particulars in that regard. The contention that Section 3(3C) of the Act is ultra vires of their fundamental rights enshrined under Article 19(1)(g) and right to property under Article 19(1)(f) as was available in the year 1968 (but since deleted under Constitution 44th Amendment Act) is no longer available. The Act received the protective umbrella of Article 31C of the Constitution

read with 9th Schedule as it has been included therein as item No. 126. It is, thereby, immuned from attack on that score. Moreover it is covered by a recent constitution bench judgment of this Court in M/s. Shri Sitaram Sugar
866
Company v. Union of India & Ors., [1990] 3 SCC 223 = [1990] 1 Scale 475. Therefore, the point is no longer res integra. Section 3(3C) is constitutionally valid and unassailable.

The next contention raised in the High Court as well as reiterated before us is that the appellants are entitled to a notice and hearing before placing them in Zone No. 1. Clubbing with other factories in the State of Maharashtra etc. is uneconomical and kept the appellants under constant loss. Therefore, it is violative of the principles of natural justice. To appreciate the contention it is necessary to look into the notification issued. The Government of India, in exercise of the power under section 3 of the Commission of Inquiry Act, 1952 appointed "Sugar Inquiry Commission" by notification No. S.O. 2670 dated August 3, 1964 which consists of Dr. S.R. Sen, the Advisor and Addl. Secretary to Government of India, Planning Commission as Chairman and four other economic experts as members of the Commission to inquire into (a) the determination of the prices and the system of distribution of sugar and (b) the policy regarding licensing of new sugar factories or the expansion of existing sugar factories. They made a detailed inquiry, after examining the persons connected with industries including many an owner of the sugar factories or representatives of the Associations of the sugar factories and cooperative Sugar Factories' Associations etc. In paragraph 4 they discussed the proliferation of zones as against the four zones recommended by the previous Tariff Commission. The representatives of the State Government and the sugar industry submitted their detailed memoranda on the various problems including zoning and cost schedules. The Commission made indepth enquiry and in paragraph 4.3, it was stated that as against the four zones recommended by the Tariff Commission, Government has gradually increased the number to twenty-two. The Commission has stated each zone should be large enough to ensure that the principle of price fixation does not degenerate into a 'cost plus' basis as the latter discourages efficiency and perpetuates inefficiency. In paragraph 4.4, it was stated that the Sugarcane Breeding Institute, Coimbatore has divided the whole country into five regions on the basis of agro-climatic and other considerations details of which were given in Chapter IV: Region (1) consists of Gujarat, Maharashtra, North Mysore, North Andhra Pradesh and South Madhya Pradesh. In paragraph 4.6, it was stated that apart from considerations relating to agro-climatic factors and comparative economic advantage, it is worthwhile to consider the variations in duration of crushing and sugar recovery also. On this basis some revision in the zones, as suggested by the Coimbatore Institute appears to be necessary.
867

In paragraph 4.7, it was stated that "on the basis of the above considerations, the Commission recommended five zones for the purpose of fixation of ex-factory price of sugar." Zone No. 1 as stated earlier, which is relevant for the purpose of these appeals, consists of Factories in Maharashtra, North Mysore etc. Accepting the recommendation, the Government of India in exercise of the powers conferred upon them by sub-rule (2) of rule 125 of the Defence of India Rules, 1962 and clause 6 of the Sugar (Control) Order, 1963 issued under section 3(3C) of the Act and in supersession of

the notification of the Government of India, Notification No. GSR 1145 dated August 6, 1965 issued the impugned notification in GSR No. 463 dated March 24, 1966 and the factories were specified in Schedules 2 & 3 annexed. The notification has been issued and was published in the Gazette of India for the purpose of fixing prices in column 2 of Schedule I annexed hereto as the maximum ex-factory price. Thus, that the appellants' factories came to be included in Zone No. 1 as recommended by the expert, Economic Commission appointed by the Government of India. The notification as stated earlier is a statutory notification issued in exercise of the powers referred to herein before.

The question, therefore, is whether the appellants are entitled to individual notices of representation and hearing before placing them in Zone No. 1 and fixation of the prices. As regards right to hearing for fixation of the prices is concerned as stated earlier, it is concluded in. M/s. Shri Sitaram Sugar Company's case. As regards the zoning of the factories is concerned it is also based on the reports submitted by the Commissions, consisting of the economic experts and the Sugarcane Breeding Institute, Coimbatore that too after considering the representations made by the State Governments and also the sugar industry. In paragraph 4 of M/s. Sitaram Sugar Company's case our learned brother Thommen, J. speaking for the court has noted that Mr Shanti Bhushan, learned counsel appearing on behalf of some of the sugar factories conceded that the zoning is valid but assailed price fixation contending that' as a result of the zoning, the cost structure was arbitrary and the classification offends Article 14. That was resisted by Shri K.K. Venugopal, learned counsel appearing for Indian Sugar Mills' Association and also counsel for cooperative sugar factories and they supported the principles of zoning. In the written submissions made by Shri Venugopal it is noted by the Bench that as was seen during the course of heating only two or three persons have come forward challenging zoning. There are 389 Sugar Factories in the country and the present intervener has 166 members. Their Associations being National Federation of Cooperative Sugar Factories Ltd.,
868
has also intervened in these petitions and have adopted the arguments of I.S.M.A. Hence almost the entire industry has supported zoning and only a handful of people who also factually are not high-cost units have opposed zoning.

In Anakapalle Coop. Agrl. & Industrial Society Ltd. etc, etc. v, Union of India & Ors., [1973] 2 SCR 882, the facts are that the Tariff Commission recommended the entire country to be divided into 15 zones and the levy sugar price was fixed on the basis. The zoning system was attacked in that case. While repelling the contention, Grover, J. speaking for the Constitution Bench held that:

"It is somewhat difficult to accept the argument of those who are opposed to the zonal system that the loss alleged to have resulted to some of the sugar producers can be attributed to the prices having been fixed zone-wise. For instance, in the Punjab zone the crushing capacity of all the factories is practically the same i.e. 1,000 tons per day. The prices which were fixed by the Government were on the basis of 67 days duration with a recovery of 8.75%. In the case of Malwa Sugar Mills the actual duration was 95 days, the recovery being 8.78%. Ordinarily and in the normal course profits should have been made by the said unit and it should not have incurred losses. The reasons for incurring losses can be many including mismanagement, lack of effi-

ciency and following a wrong investment policy which have nothing to do with the zonal system."

and again at page 894 it is laid thus:

"The extreme position taken up on behalf of some of the petitioners that the prices should have been fixed unit-wise and on the basis of actual costs incurred by each unit could hardly be tenable. Apart from the impracticability of fixing the prices for each unit in the whole country the entire object and purpose of controlling prices would be defeated by the adoption of such a system. It must be remembered that during the earlier period of price control the price was fixed on an All India basis. That still is the objective and if such an objective can be achieved it cannot be doubted that it will be highly conducive to proper benefit being concerned on the consumers. According to the Commission the objective to be achieved should be to have only two

869

regions in the while country, namely, sub-tropical and tropical. Not a single expert body appointed by the Government of India from time to time countenanced the suggestion that price control should be unit-wise. It appears that even before the Tariff Commission such a point of view was understandably not pressed on behalf of the sugar industry. The low cost units demanded the formation of the larger zones. The high cost units asked for the formation of smaller zones. No material has been placed before us to show that there was any serious demand for prices being fixed unit-wise"

It was further held that even in the arguments it was almost common ground with the exception of one or two dissentient voices that zoning is unavoidable in our country in the matter of fixing of the price of sugar. Thus, this Court rejected that zoning is to be done on unit-wise and that fixation of the price for each unit in the whole country is impracticable, unworkable and would defeat the very purpose of fixing sugar price.

In Shri Sitaram Sugar Company's case in paragraph 59, this Court held that it is a matter of policy and planning for the Central Government to decide whether it would be on adoption of a system of partial control, in the best economic interest of the sugar industry and the general public that sugar factories are grouped together with reference to geographical-cum-agro-economic-factors for the purpose of determining the price of levy sugar. Sufficient power has been delegated to the Central Government to formulate and implement its policy decision by means of statutory instruments and executive orders. Whether the policy should be altered to divide the sugar industry' into groups of units with similar cost characteristics with particular reference to recovery, duration, size and age of the units and capital costs per tonne of output, without regard to their location is again a matter for the Central Government to decide. What is best for the sugar industry and in what manner policy should be formulated and implemented, bearing in mind the fundamental object of the statute, namely, supply and equitable distribution of essential commodities at fair prices in the best interest of the general public, is a matter for decision exclusively within the province of the Central Government. Such matters do not ordinarily attract the power of judicial review.

In paragraph 61 it was further stated that the division of industry

870

on zonal basis for the purpose of price determination has been accepted without question by almost all the producers

with the exception of a few like the petitioners. The individual disadvantage for the loss, this supply on account of present zoning system by its very nature is incapable of determination by judicial review.

In Saraswati Industrial Syndicate Ltd. etc. v. Union of India, [1975] 1 SCR 956, this Court held that price fixation is more in the nature of a legislative measure even though it may be based upon objective criteria found in a report or other material. It could not, therefore, give rise to a complaint that rules of natural justice have not been followed in fixing the price. In Prag Ice & Oil Mills & Anr. etc. v. Union of India, [1978] 3 SCR 293, Chandrachud, J. (as he then was) speaking for the Court held that price fixation is really legislative in character in the type of control order before the court and it satisfies the test of legislation and legislative measure does not concern itself with the facts of an individual case. It is meant to lay down a general rule applicable to all persons or objects or transactions of a particular kind or class.
(emphasis supplied)

In Laxmi Khandsari etc. etc. v. State of U.P. & Ors., [1981] 3 SCR 92. the facts are that in exercise of power under Clause 8 of Sugarcane (Control) Order, 1966, a notification was issued prohibiting crushing during particulars hours of the day. It was contended to be violative of the principles of natural justice. It was held that it is legislative in character and the rules of natural justice would stand completely excluded and no question of hearing arises. In Union of India & Anr. v. Cynamide India Ltd. & Anr., [1987] 2 SCC 720 at 734 & 735, Chinnappa Reddy, J. speaking for the Court held that legislative action, plenary or subordinate, is not subject to rules of natural justice. In the case of Parliamentary legislation, the proposition is self evident. In the case of subordinate legislation, it itself provide for a notice and for a hearing, no one can insist upon it and it will not be permissible to read natural justice into such legislative activity. In Shri Sitaram Sugar Company's case it was reiterated that fixation of price for sugar is a legislative policy and the principles of natural justice would not apply.

From this perspective of the statutory study and in the light of the law laid down by this Court, the question emerges whether the appellants are entitled to an individual notice and hearing before placing them in Zone No. 1 in the impugned notification. The fixation of
871
the price and zoning are integral scheme of the notification, without placing the factories in the appropriate zone based on agro-climatic and other economic considerations the proper price fixation cannot be made. So both the fact or are part of the policy decision by the Government in exercise of the statutory powers. This decision is based on the recommendation made by the Sugar Commission consisting of experts in the field of agro-economics who after exhaustive study and consideration of the relevant material placed before it made the recommendation. Thereby it assumes the character of legislative policy. It does not concern itself with an individual case. Once it is concluded that the zoning system being an integral part of the price fixation of the sugar produced by the factories in a particular zone, it is legislative in character and no individual sugar factory is entitled to a notice and hearing before placing the particular factory or factories in a particular zone. It was open to place its view like others' before the Commission. It is undoubted that in the subsequent years when the

writ petition was filed in the High Court on behalf of the government, a concession was made that the appellants would be reimbursed of the losses they incurred but that is no precedent for deciding that the appellants should be placed in a particular zone or that they should be heard before placing them in Zone No. 1. It is true as contended by Shri Aggarwal that in paragraph 52 and 53 in Shri Sitaram Sugar Company's case, this Court held that any act of the repository of power, whether legislative or administrative or quasi-judicial, is open to challenge if it is in conflict with the Constitution or the governing Act or the general principles of law of the land or it is arbitrary or unreasonable that no fair minded authority could ever had made it. Even then this Court has pointed out that the impugned orders are undoubtedly based on an exhaustive study by experts and that the impugned orders though open to criticism would not be subject to judicial review. It is also true that in Anakapalle Coop. Agrl. and Industrial Society's case, this Court has pointed out that all the factories in a State would be placed in one zone and placing them in different regions would be uneconomical. In Shri Sitaram Sugar Company's case, the Constitution Bench also held that the above decision requires no reconsideration. But the observations therein have been made based upon the recommendation made by the Tariff Commission and accepted by the government to keep each State in a particular zone but when the subsequent Sugar Commission went into the question since by then there is appreciable increase of large number of sugar factories in several regions, though not on the Statewise basis in a particular zone. As stated earlier the recommendations are based on indepth study. The notification as such was not questioned in the writ petition. Therefore, the observation of this
872
Court in that paragraph cannot be construed to put a fetter on the power of the government to reconsider the policy due to change in circumstances of groupings of the sugar factories in a State in one zone or other region. It is apposite here to quote the rule laid in Joseph Beauharnais v. People of the State Illinois, 96 L.Ed. 919 at 930, applicable to the facts of the present case, thus:

"This being so, it would be out of bounds for the judiciary to deny the legislature a choice of policy, provided it is not unrelated to the problem and not forbidden by some explicit limitation on the State's power. That the legislative remedy might not in practice mitigate the evil, or might itself raise new problems, would only manifest once more the paradox of reform. It is the price to be paid for the trial-and-error inherent in legislative efforts to deal with obstinate social issues."

Moreover the Sugar Commission heard the persons desired to be heard and considered the representation and material produced. At the stage of notification the question of further representation or hearing does not arise not a feasible exercise. It is for the government whether to accept or reject or modify the recommendation made by the Commission. We, accordingly, hold that zoning is a legislative act and policy. We have no hesitation to conclude that the contention of the appellants that they are entitled to individual representation and notice and heating before placing them in Zone No. 1 is devoid of force and is rejected. It is also equally true that the government did not file any counter affidavit even till date, refuting the allegations made in the grounds of appeal regarding the alleged costs structure and the consequential loss that the appel-

lants are being put to. But in view of the finding that it is a legislative policy but not an executive action, we cannot draw an adverse inference against the State for not denying those allegations and to conclude that the appellants' factories are to be placed in a particular zone. In other words this Court cannot interfere with the legislative policy of zoning particular factories in a particular region, namely, in Zone No. 1 of the appellants' factories by merely the State having omitted to file the counter affidavit refuting the allegations of the alleged loss. In an individual case of administrative action, if no counter affidavit has been filed an adverse inference may be drawn and relief may be moulded as per given situation. Likely that some loss may be caused to individual factory but as pointed out by this Court in Anakapalle Coop. Agrl. and Industrial Society's case that the price fixation cannot be made unit-wise and it is not practic-
873
able to make unit as a base t6 fix the price or to place in a particular zone. The very relief in the writ petition to fix the price at Rs. 161 per quintal cannot be ordered as was already negatived by this Court. Considering from the above perspective we have no hesitation to reject the contention of the appellants and dismiss the appeals but without costs.

N.P.V. Appeals dismissed.
874