

PETITIONER:
STATE OF MADHYA PRADESH

Vs.

RESPONDENT:
JAORA SUGAR MILLS LTD. & ORS. ETC.

DATE OF JUDGMENT: 10/10/1996

BENCH:
K. RAMASWAMY, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

These appeals by special leave are filed against the judgment and order dated September 1, 1978 and September 4, 1978 passed by the Madhya Pradesh High Court, Indore Bench in Misc. Petition Nos. 140, 139, 43 and 44 of 1977.

These appeals arise from the Sugarcane Control Order, 1966 [for short, the "Order"] and the M.P. Sugarcane [Regulation of Supply and Purchase] Act, 1959 [for short, the "Act"]. It is rather unfortunate that the sugarcane growers who spent their sweat and blood in raising the sugarcane in the Years 1974-75, 1975-76 had to wait for 20 years to receive the price of the sugarcane supplied by them to the respondents' factories. The respondent in C.A. 1813/80 is a Hindu Undivided Family represented by its Karta and respondents in other appeals are factories. The Central Government had fixed the price of the sugarcane under Rule 3 [1] of the Rules issued under Section 3 [3] (c) of the Essential Commodities Act, 1957 at Rs. 8.60 per quintal. Various meetings of the sugarcane growers and the sugarcane factories and their associations, were convened by the Government of Madhya Pradesh and ultimately the agreement got crystallised at the meeting held on March 21, 1976 to fix the final price of the sugarcane at Rs. 12/- per quintal for the sugarcane supplied at the factory and Rs. 11.50 per quintal for the sugarcane supplied at other supply centres. Though the sugarcane was supplied by the cane-growers, since their amounts could not be paid, the appellant-Government resorted to Section 21 of the Act to enforce the liability by recovering the same as arrears of land revenue. The respondents came to challenge the demands by filing the aforesaid writ petitions. The Division Bench of the High Court in the aforesaid judgments in three appeals has held that since no separate agreement was entered into between the respondents and the sugarcane growers, the liability could not be enforced by way of arrears of land revenue. In CA No. 1811/80 involving the question of interest on account of delayed payments it was held that since the amount was not paid as per the price fixed under the Order, no liability of interest would be charged thereon. Therefore the demand for payment of interest on delayed payment is

without authority of law. Thus these appeals by special leave.

Shri U.N. Bachawat, learned senior counsel appearing for the State, contended that as per the record produced and the averments made in the counter-affidavit filed in the High Court in the writ petitions that there was a specific oral agreement between the sugarcane growers and the factories represented by the Association and many of their representatives personally present except Kaluram's joint family firm and all of them have agreed to final price of sugarcane. Even with regard to Kaluram's firm, since the meeting was adjourned once, to enable him to be consented, as he was present, the Secretary of the Association contacted him over telephone and he agreed to abide by the agreement. In furtherance thereof, on March 21, 1976 the gentleman agreement has been entered into for the final price of the sugarcane to be supplied by the sugarcane growers. As a consequence, there was an agreement between the owners of the sugar factories and the sugarcane growers. Since the sugarcane growers were not paid the price, in furtherance thereof, the factories are liable to pay the sugarcane price and also the interest on the delayed payment in one appeal. The view taken by the High Court is not valid in law.

Shri S.K. Jain, learned counsel for the respondents, contended that Rules 3 and 5-A of the Order determine the liability to pay the price and the additional price. The Central Government having determined the price of the sugarcane under the Order, there is no power to the State Government, de hors the Order, to fix any agreed price. The concept of agreed price came into force on September 19, 1976 by virtue of the Order. Until then, there was no power to fix the agreed price. The State Government has, therefore, no power under the Act to fix any price since the field was occupied by the Order. Kaluram was not present and he had not agreed to the fixation of the increased price of the sugarcane. At best, it would be only a compulsion. Unless there is an individual written agreement between the factory and each sugarcane grower, there is no contract to pay over the same. Such of the amounts, de hors the Order, cannot be recovered as arrears of land revenue since such liability visits with penal consequences of prosecution under Section 7 of the Essential Commodities Act. He also contends that the retrospective effect cannot be given to the price of the sugarcane supplied earlier and that, therefore, the Order of the High Court is clearly legal. He also contends that unless the price is fixed under the Order, no liability to pay interest arises thereon on the delayed payment of the value of the sugarcane, as was originally determined by the Central Government, under the Order. Under those circumstances, the view taken by the High Court is correct in law. In support thereof, he places reliance on the judgments of this Court in *State Of Tamil Nadu v. Kothari Sugar & Chemicals Ltd.* [1996] 7 SCC 751 and *Thiru Arooran Sugar Ltd. v. Dy. Commercial Tax Officer* [(1988)> 71 STC 444 (Madras)].

The first question that arises for consideration is: whether there is an agreement for the final price of sugarcane for the relevant period and if so whether it is in consonance with the Order? Related question is: whether such fixation is retrospective in operation and whether the Government can recover such amount under the Act? As regards the fixation of the price, the field undoubtedly is occupied by the Order. Rule 2 [g] of the Order defines 'price' to

mean the price or the minimum price fixed by the Central Government from time to time for sugarcane delivered to a sugar factory at the gate of the factory or at a sugarcane purchasing center or to a khandsari unit. Clause 2 [i] defines 'producer of sugar' to mean a person carrying on the business of manufacturing sugar by vacuum pan process and clause 2[j] defines 'reserved area' to mean any area where sugarcane is grown and reserved for a factory under sub-clause [1] (a) of clause 6. Under clause 2 [k] 'year' means the year commencing on the first day of July and ending with the thirtieth day of June in the year next following.

Rule 3 [3] determines "where a producer of sugar purchases any sugarcane from a grower of sugarcane or from a sugarcane growers' co-operative society, the producer shall, unless there is an agreement in writing to the contrary between the parties, pay within fourteen days from the date of delivery of the sugarcane to the seller or tender to him the price of the cane sold at the rate agreed to between the producer and the sugarcane grower or sugarcane growers' co-operative society or that fixed under sub-clause (1), as the case may be either at the gate of the factory or at the cane collection centre or transfer or deposit the necessary amount in the Bank Account of the seller or the co-operative society, as the case may be."

Clause (3A) to Rule 3 was introduced by way of an amendment made in GSR 62(E), dated 2.2.1978. For payment of the price within 15 days with interest on the delayed payment at the rate of 15% per annum for the period of such delay beyond 14 days has been introduced. Earlier, it was covered by the Act. Clause (1) of Rule 3 fixes the minimum price of sugar payable by the purchaser of the sugarcane as fixed by the Central Government in the manner indicated therein. Clause (2) of Rule 3 is relevant for the purpose of this case which shows that "no person shall sell or agree to sell sugarcane to a producer of sugar or his agent and no such producer or agent shall purchase or agree to purchase sugarcane, at a price lower than that fixed under sub-clause (1)." Section 23(3) of the Acts also couched in similar language, enables to novate by contract the minimum price fixed by the Central Government in respect of cess payable to Government.

This would clearly indicate that despite the fixation of minimum price under clause (1) of Rule 3, by agreement between the sugarcane grower and the purchaser of the sugarcane, they would be at liberty to agree to sell or purchase the sugarcane at a higher price than that was fixed by the Central Government under clause (1) of Rule 3. Only for postponement of payment beyond 14 days there should be an agreement in writing between the parties obviously with the concurrence of the Central Government or authorised authority in that behalf. Thus there is no statutory prohibition in that behalf to pay higher price. That would be further clear by Rule 3(2) which speaks of the contract between the parties for payment of higher price of sugarcane fixed under clause (1) of Rule 3 pursuant to the agreement or pursuant to the minimum price fixed by the Central Government under Rule 3(1) of the Order.

Rule 3A speaks of rebate that can be deducted from the price paid for sugarcane. In other words this concept of agreed price paid was brought on statute with effect from September 24, 1976 by amendment made through GSR.815 (E). Prior to the statutory concept of the agreed price, Rule 3(2) did not preclude the parties; in other words, it enabled the parties to agree for a higher price than what was fixed for the sugarcane supplied by sugarcane supplier

under Rule 3(1) of the Order. In addition, Rule 5A also gives Power to fix and pay additional price for sugarcane purchased on or after 1st October, 1974. Thus, it could be seen that prior to coming into force of Rule 3A, the minimum price fixed by the Central Government under Rule 3(1) and additional price fixed under Rule 5A, it was within the domain of the contract between the sugarcane growers and the factories who could agree to pay price higher than the minimum price fixed under the Order. What sub-rule (2) of Rule 3 prohibits is the purchase or sale or agreement in that behalf, for bargain to pay price lesser than the minimum price fixed by the Central Government. In other words, the sugarcane growers should not be compelled to sell the sugarcane at a price lesser than was prescribed by the Order. Thus, we hold that there was no statutory prohibition at the relevant time to agree to pay higher price than was fixed under the order.

The question then is: whether such a higher price has been agreed to be paid to the sugarcane growers, when contract has come into existence between the respondents and the canegrowers with the agis of the appellants? As a fact, except Kaluram, all representatives of other factories were present at the time of the agreement dated March 21, 1976. As far as Kaluram is concerned, on the first occasion he was present, but on the second occasion when the meeting was adjourned, he was not present. It has been averred in the counter-affidavit that the Secretary of the Sugarcane Factories Owners' Association had contacted him when he was in the hospital and thereafter, the agreement was entered into. Though, subsequently, an attempt was made by the Secretary to wriggle out from it, the Government have stated that and the sugarcane growers have also agreed for the same, we are of the considered view that he was a consenting party and there was consensus ad idem to pay higher price of sugarcane than the minimum price fixed by the Central Government and they acted upon it. There was no prohibition for oral agreement between growers and owners through the service of the Cane Commissioner, a statutory authority to effect such agreement. It is not in dispute that thereafter the sugarcane growers supplied the sugarcane to the respondent factories and that they utilized the sugarcane for producing the sugar. Other factories had paid the agreement price.

The contention of Shri S.K. Jain that the agreement was retrospective is not correct. It is seen that the sugarcane crushing year has been defined under the Order itself and during the season the Price fixed by the Central Government was treated by the State Government to be the tentative price, subject to agreements between the parties and the final price was agreed as contracted by the parties. Thus, we hold that the payment of price @ Rs.12/- per quintal at the factory and Rs.11.50 per quintal at the purchasing centre was agreed price for supply of sugarcane by the sugarcane growers and received by the factories at the respective places.

The question then is: whether it is a compulsive price and whether the State Government had entered into such a contract? It is seen and it cannot be disputed that the Cane Commissioner is the statutory authority under the Act and the Order to regulate fixation of the zone for the supply of sugarcane to the respective factories and for regulation of supply of sugarcane to the factories covered under the Act. Section 12 of the Act speaks of estimation of the requirements under Sections 15 to 17 of the Act of quantity of sugarcane required to be supplied to the occupier of the

factory. Section 13 speaks of registration of sugarcane growers and the sugarcane growers Co-operative Societies within the area of the occupier of the factory. Section 15 deals with declaration of the reserved area for the factory under sub-section (2) of Section 19. Section 16 deals with declaration of assigned area to the factory. Section 19 deals with regulation of purchase and supply of cane in the reserved area and assigned area respectively. The payment of the price is regulated under Section 20 which reads as under:

"20. Payment of cane price. - (1)
The occupier shall make suitable provision to the satisfaction of the collector for the payment of the price of cane.

(2) Upon the delivery of cane the occupier shall be liable to pay immediately the price of the cane so supplied, together with all other sums connected therewith and where the supplies have been made through a purchasing agent, the purchasing agent also shall be similarly liable in addition to the occupier.

(3) Where the person liable under subsection (2) is in default in making the payment of the price for a period exceeding fourteen days from the date of delivery he shall also pay interest at a rate of 7-1/2 per cent per annum from the said date of delivery up to the date of payment but the Cane Commissioner may, in any case direct with the approval of the State Government that no interest shall be paid or be paid at such reduced rate as he may fix.

(4) The Cane Commissioner shall forward to the Collector a certificate under his signature specifying the amount of arrears on account of the price of cane plus interest, if any, due from the occupier and the Collector on receipt of such certificate shall proceed to recover from such occupier the amount specified therein as if it were an arrear of land revenue together with further interest up to the date of recovery."

It would thus be clear that the Cane Commissioner having power to compel the cane growers to supply cane to the factory Khandsari unit, he has incidental power and duty bound to ensure payment of the price of the sugarcane supplied by the sugarcane grower. The price fixed or agreed is a statutory price and bears the stamp of statutory first charge on the sugar and assets of the factory over any other contracted liabilities to recover the price of the sugarcane supplied to the factory or Khandsari unit.

Section 23 deals with levy of cess on the sugarcane and sub section (3) contemplates that "notwithstanding the terms of any contract or agreement for sale of cane whether

entered into before or after the imposition of the cess under this Section, the buyer of the cane shall be liable to pay the amount of the cess in addition to and as part of the contracted price of such cane." The person who commits default in making payment of the cess shall be liable to the recovery thereof with interest enumerated in subsection (4) of Section 23 and recovery has been envisaged thereunder read with sub-section (5) of Section 23. But the material fact is that sub-section (3) also gives an indication analogous to Rule 3(2) of the Order that in addition to the price fixed, the higher price should always be permissible to be entered by a contract or agreement between the parties.

Section 26 imposes levy of penalty for non-payment or contravention of the provisions of the Act or the Rules. Section 27 provides the procedure for institution of the proceedings. Thus, the statutory authority has obligation to ensure proper price of sugarcane supplied by the sugarcane growers. Thus, the Government has to ensure the meeting of the growers and occupiers of factories and their Association. Thereat the final price of sugarcane was fixed; the parties orally agreed thereto and the proceedings culminate into a concluded gentlemen contract. It is in notation of the minimum price fixed by the Central Government. The agreement is tainted with compulsion, as contended but in novation of the minimum price fixed under the order.

Thus, it would be seen that the Act regulates the recovery as arrears of land revenue. Accordingly, demand has been made for payment of the amount in a sum of Rs.6,34,166/- in CA No.1813/80, Rs.13,40,700/- in CA No 1814/80 and Rs.2,71,000/- in CA No.1812/80. Thus, the demands issued against the respondents are in accordance with the provisions of the Act and they are liable to pay the same.

The question then is: whether the respondent is also liable to pay interest for the delayed payment? It is seen that under the Order and the Act there is power to impose interest not exceeding 15%. In this case, 14% and odd was the interest levied on delayed payment. It is seen that in view of the agreement, as upheld earlier, in addition to the minimum price, therefore, the liability has arisen under the Order for payment of the value of the sugarcane supplied by the growers. On account of the default in payment thereof, in terms of clause (3) of Rule 3, since it was not paid, by operation of Section 20 of the Act, they are entitled to recover the same as arrears of land revenue. Therefore, the view of the High Court is clearly illegal.

Though Shri S.K. Jain is right in contending that unless there is an agreement between the parties, the liability cannot be fastened under the Order or the Act; but in view of the finding that there was an agreement between the parties, as held earlier, the ratio in the judgment in Kothari's case (supra) relied on by the counsel is of not much assistance in the facts of this case. On the other hand, it supports the view we have expressed above. Therein this Court upheld that if there is an agreement between the parties, then by operation of the Order the liability would be fastened on the sugar factory. In those cases, there was a finding that there was no proof of agreement entered into between the factory and the cane-growers. Therefore, sales tax would not be recovered on the price fixed in excess for minimum cane price fixed by the Central Government under the Order.

In Thiru Arooran Sugars Ltd's case (supra) relied on by

Shri Jain, the learned Judges had considered Rule 3(1) of the Order and the finding that there is no power to fix any price in excess or the minimum price fixed under the Order was rejected. It is clearly illegal. Rule 3(2) was not brought to the notice of this Court, when the decision was upheld, but on the facts it makes no difference since the view in Kothari's case (supra) is not inconsistent with the view we have expressed. On the other hand, the view expressed therein also is consistent with the view we have taken. In fact, in Tungabhadra Sugar Works Ltd. vs. State of Karnataka & Ors. [(1994) 73 STC 561] approved by this Court, the Division Bench of the Karnataka High Court squarely considered this question and had held at page 577 in paragraph 20 that "Even though the contract may fix a price nothing prevents the parties from subsequently modifying or increasing the price, resulting in novation. The aforesaid term in the contract can be relied on, only if the petitioner had paid a scale price as determined by the Central Government under the control order. Where the petitioner has paid a higher price than what is payable in terms of Rule 3 and 5A(1), it will be a case of novation of contract and the increased Price will replace the original contract term relating to price." We approve of the view and accordingly we have no hesitation to hold that the parties would always be at liberty to agree for payment of higher price than the minimum price fixed by the Central Government and the contract will be novation of the minimum price fixed by the Central Government under Rule 3(1) of the Order. Therefore, the respondent is liable to pay interest on delayed payment under the Act read with the order.

We are informed that these two mills have become sick mills and have been taken over by the Government. If the amount has not been paid already, the Government is directed to disburse the amount within a period of 3 months from the date of the receipt of the respondents etc. If there is any shortfall in the amount, the assets of the respondents etc. If there is any shortfall in the amount, the assets recovered from the sick mills, if any, may be fastened as a liability on the sick mills and be adjusted in accordance with the take-over proceedings.

The appeal s are accordingly allowed. But for the fact that the mills have been taken over, we would have imposed exemplary costs in this case; hence we impose no costs.