

PETITIONER:
GUPTA SUGAR WORKS

Vs.

RESPONDENT:
STATE OF U.P. & ORS.

DATE OF JUDGMENT 26/10/1987

BENCH:
SHETTY, K.J. (J)
BENCH:
SHETTY, K.J. (J)
RAY, B.C. (J)

CITATION:
1987 AIR 2351 1988 SCR (1) 577
1987 SCC Supl. 476 JT 1987 (4) 154
1987 SCALE (2) 824
CITATOR INFO :
R 1990 SC1277 (55,57)

ACT:

U.P. Khandsari Sugar (Levy) order 1981: Levy order-Validity of Khandsari manufacturers required to surrender 50% of production-Fixation of price for levy khandsari sugar-Whether valid-Whether colourable exercise of power. The U.P. Khandsari Sugar (Levy) order, 1981 issued in exercise of powers under section 3 of the Essential Commodities Act, 1955, required Khandsari manufacturing units to surrender levy of 50% of the production by sulphitation units in the first process. The balance 50% with the total production by subsequent process was left free to be sold in the open market by the manufacturing units. The price fixed for the levy Khandsari sugar was Rs. 320 per quintal.

HEADNOTE:

%

In a writ petition, the petitioner challenged the price fixation on the ground; that the State Government had not taken into consideration the guidelines in-built in sub-section 3C of section 3 of the Essential Commodities Act, 1955, that the levy order was unreasonable or excessive restriction on the fundamental rights guaranteed under Articles 19(1)(g) and 14 of the Constitution, and that the levy was a colourable exercise of the power as the State Government sold the levy sugar by public auction realising large profit.

Dismissing the Writ Petition,

^

HELD: 1.1 The Court does not act like a Chartered Accountant nor acts like an Income-Tax officer. The Court is not concerned with any individual case of any particular problem. The Court only examines whether the price determined was with due regard to considerations provided by the statute, and whether extraneous matters have been excluded from determination. [580D-E]

Union of India v. Cynamide India Ltd. AIR 1987 Sept. SC 180' at 1805. followed.

1.2 The primary consideration in the fixation of price

would be

578

the interest of consumers rather than that of producers.
[581F]

Since the petitioners in the instant case, are allowed to sell freely at any rate they like, the remaining 50% of the Sugar (after excluding the 50% which they have to give for levy) as also the produce by the second and third process, the loss if any caused to the petitioners would be minimal. [581G]

New India Sugar Works v. State of Uttar Pradesh & Ors., [1981] 3 SCR 29, relied.

1.3 It is clear from the Preamble, that the primary object of the Essential Commodities Act, 1955 was to control production, supply, and distribution of essential commodities, and to make such commodities available at a reasonable price. The exercise provided under the Act was intended ultimately to serve the interest of consumers. It is fundamental in the entire scheme of the Act. But then, the interest of the industry as a whole cannot be left out. It is also required to be borne in mind. The levy price of sugar should ensure reasonable return to the industry. That is one of the guidelines provided under sub-section 3C of section 3 of the Act. But that does not mean that the interest of producers should outweigh the interest of consumers. It would be tilting the balance too much. [582C-F]

1.4 There is no colourable exercise of power. There was every justification for the sale by public auction. The petitioner and some other producers delivered inferior quality of Khandsari, which was found to be unacceptable to consumers at Fair Price Shops. The State officers accordingly reported to the Government, which issued instructions to distribute the levy sugar liberally through permits for marriages and religious functions. The consumers, however, could not come forward. The Government then directed the disposal of levy sugar by public auction. It was not with a view to earn profit, although incidentally the Government made some profit. The levy sugar was brought to public sale only to prevent deterioration when the consumers refused to accept it. [583A-C]

The Panipat Co-operative Sugar mills v. Union of India [1973] 12 SCR 860 and Anakapalle Coop. Agrl. & Industrial Society Ltd. v. Union of India & Ors., [1973] 2 SCR 882, referred to.

579

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition No. 7993 of 1982.

(Under Article 32 of the Constitution of India).

R.K. Jain and R.P. Singh for the Petitioner.

Prithiviraj and Mrs. Shobha Dikshit for Respondent Nos. 1 and 3 to 5.

Kuldip Singh, Additional Solicitor General, Mr. C.V. Subba Rao and B. Parthasarthy for Respondent No. 2.

The Judgment of the Court was delivered by

JAGANNATHA SHETTY, J. This is a petition under Article 32 of the Constitution. The petitioner is engaged in the manufacture of Khandsari sugar. The petitioner challenges the validity of the U.P. Khandsari Sugar (Levy) order, 1981 ("Levy order"). It was issued in exercise of powers under Section 3 of the Essential Commodities Act, 1955 by virtue of delegation of power by the Central Government under

Section 5 of the said Act. The levy order requires Khandsari manufacturing units to surrender levy of 50% of the production by sulphitation units in the first process. The balance 50% of that process with the total production by subsequent processes was left free to be sold in the open market by the manufacturing units. The price fixed for the levy Khandsari sugar was Rs. 320 per quintal.

The petitioner challenges the price fixation on the ground that the State Government has not taken into consideration the guidelines in-built in sub-section 3C of section 3 of the Essential Commodities Act, 1955. The petitioner alleges that the levy order is unreasonable or excessive restriction on the fundamental rights guaranteed under Articles 19(1)(g) and 14 of the Constitution. It is also the case of the petitioner that the State Government sold the levy sugar by public auction realising large profit and the levy therefore, was a colourable exercise of the power.

Before considering these contentions, we may start with recent observation of o. Chinnappa Reddy, J. in Union of India v. Cynamide India Ltd. AIR 1987 Sept. SC 1802 at 1805:

"Price fixation is neither the function nor the forte of the Court. We concern ourselves neither with the policy nor with the rates. But we do not totally deny ourselves the jurisdiction to inquire into the question, in appropriate

580

proceedings, whether relevant considerations have gone in and irrelevant considerations kept out of the determination of the price. For example, if the legislature has decreed the pricing policy and prescribed the factors which should guide the determination of the price, we will, if necessary, inquire into the question whether the policy and the factors are present to the mind of the authorities specifying the price. But our examination will stop there. We will go no further. We will not deluge ourselves with more facts and figures. The assembling of the raw materials and the mechanics of the price fixation are the concern of the executive and we leave it to them. And, we will not reevaluate the considerations even if the prices are demonstrably injurious to some manufacturers or producers. The Court will, of course, examine if there is any hostile discrimination. That is a different 'cup of tea' altogether."

This will be the parametre and the limitation of inquiry by Courts whenever the price fixation of any essential commodity is called into question. The Court does not act like a Chartered accountant nor acts like an Income-Tax officer. The Court is not concerned with any individual case or any particular problem. The Court only examines whether the price determined was with due regard to considerations provided by the statute. And whether extraneous matters have been excluded from determination.

In the present case even this limited inquiry appears to be unnecessary. The validity of the same levy order was the subject matter of decision of this Court in New India Sugar Works v. State of Uttar Pradesh & Ors. [1981] 3 SCR 29.

There Fazal Ali, J. who spoke for the Bench observed:

"It was next strongly contended that in fixation of the price of levy sugar the Government has not

taken into consideration the fact that the petitioners would undergo a serious loss because the price would not be sufficient even to cover their manufacturing cost. We are, however, unable to agree with this argument. The policy of price control has for its dominant object equitable distribution and availability of the commodity at fair price so as to benefit the consumers. It is manifest that individual interest, however, precious they may be must yield to the larger interest of the

581

community viz., in the instant case, the large body of the consumers of sugar. In fact, even if the petitioners have to bear some loss there can be no question of the restrictions imposed on the petitioners being unreasonable. In *Shree Meenakshi Mills Ltd. v. U.O.I.* this Court observed as follows.

"If fair price is to be fixed leaving a reasonable margin of profit, there is never any question of infringement of fundamental right to carry on business by imposing reasonable restrictions.

In determining the reasonableness of a restriction imposed by law in the field of industry, trade or commerce, it has to be remembered that the mere fact that some of those who are engaged in these are alleging loss after the imposition of law will not render the law unreasonable."

(Emphasis supplied).

Similar view was taken by this Court in the case of *Prag Ice and oil Mills & Anr. v. Union of India* [1978] 3 SCR 293 where the Court speaking through Beg, C.J. Observed as follows:

"It has also to be remembered that the object is to secure equitable distribution and availability at fair price so that it is the interest of the consumer and not of the producer which is the determining factor in applying any objective tests at any particular time."

In this view of the matter, the primary consideration in the fixation of price would be the interest of consumers rather than that of the producers. Moreover, we think that since the petitioners are allowed to sell freely at any rate they like the remaining 50% of the sugar (after excluding the 50% which they have to give for levy) as also the produce by the second and third process, the loss if any caused to the petitioners would be minimal.

Mr. R.K. Jain learned counsel for the petitioner however, urged that the above case did not lay down the correct law. He said that the primary consideration in the fixation of price would not be the interest of consumers, but to ensure a reasonable return to producers. That H

582

according to him the law laid down by this Court in (i) *The Panipat Co-operative Sugar Mills v. Union of India* [1973] 2 SCR 860 and *Anakapalle Coop. Agrl. & Industrial Society Ltd. v. Union of India & Ors.*, [1973] 2 SCR 882. Since these two decisions have not been referred to in the *New India Sugar Works* case we should refer this case to a larger bench for decision.

We do not think that the counsel is justified in his submission. We do not find any diversity of views taken in

the aforesaid cases. All those cases concerned with the price fixation of the essential commodity under the essential Commodities Act. The primary object of the Act was to control the production supply and distribution of essential commodities and to make such commodities available at a reasonable price. The Preamble of the Act makes it clear. It reads: "An Act to provide in the interest of the general public, for the control of the production, supply and distribution of, and trade and commerce in certain commodities."

The exercise provided under the Act was intended ultimately to serve the interest of consumers. It is fundamental in the entire scheme of the Act. But then, the interest of the industry as a whole cannot be left out. It is also required to be borne in mind. The levy price of sugar should ensure reasonable return to the industry. That is one of the guidelines provided under sub-section 3C of Section 3 of the Essential Commodities Act. But that does not mean that the interest of producers should outweigh the interest of consumers. It would be tilting the balance too much. Such a contention in our opinion, also runs afoul of our earlier analysis.

It is true that there is no express reference to Panipat and Anakapalle in the judgment in New India Sugar Works. But the judgment need not be a digest of cases. It need not be written like a thesis. The decision in New India Sugar Works may be brief, but not less predictable on the principles of Panipat and Anakapalle. There this Court found the levy price reasonable even from the point of view of the industry. This Court took into consideration the liberty reserved to manufacturers to sell freely 50% of the Sugar manufactured and also 100% of the produce by 2nd and 3rd processes. This Court was of opinion that by such a free sale the industry could get reasonable return. We agree with this conclusion and see no reason for reconsideration.

As to the grievance of the petitioner that the State has made

583

profit by the sale of Khandsari sugar at public auction, we perused the counter affidavit of the State. We do not find any colourable exercise of the power. There was every justification for the sale by public auction. It has been stated that the petitioner and some other producers delivered inferior quality of Khandsari. That was found to be unacceptable to consumers at Fair Price Shops. The State officers accordingly reported to the Government. The Government issued instructions to distribute the levy sugar liberally through permits for marriages and religious functions. The consumers, however, could not come forward. The Government then directed the disposal of levy sugar by public auction. It was not with a view to earn profit although incidentally the Government made some profit. The levy sugar was brought to public sale only to prevent deterioration when the consumers refused to accept it. We have no reason to doubt the explanation given by the State Government.

In the result, the Writ Petition fails and is dismissed with costs.

N.P.V.

Petition dismissed.

584