

**A INDIA SUGARS & REFINERIES LTD.**

v.

**AMRAVATHI SERVICE CO-OPERATIVE SOCIETY LTD.**

November 19, 1975

**B [A. N. RAY, C.J. AND N. L. UNTWALIA, J.]**

*Natural Justice—Duty to act judicially and according to natural justice depends on nature of interest to be affected—Circumstances for exercise of powers and sanctions involved—Sugar Cane Control Order, 1966 Clause 5(1), 5(3) and 5(5)—[Sugar Cane Control (Additional Powers) Act 1962]—Sugarcane growers to be heard both while fixing quantum of additional price as well as while granting exemption from payment of additional price.*

**C** The respondents are co-operative societies of growers of sugarcane who supplied sugarcane to the appellant which is a sugar manufacturing factory. The use and supply of sugarcane is controlled under the provisions of the Essential Commodities Act, 1955. The Sugarcane Control Order, 1955 empowers the Government to fix the minimum price payable by the manufacturer of sugar to the grower of sugarcane. In 1962, the Sugarcane Control (Additional Powers) Act, 1962 came into existence. Pursuant to the powers conferred by the 1962 Act, the Central Government amended the 1955 Control Order by introducing clause 3A providing for payment of additional price for sugarcane purchased by the producers of sugar. The 1955 Control Order was repealed and replaced by the Sugarcane Control Order 1966. The respondents are recognised by the Government of India and the appellant for the purpose of 1966 Control Order. Under the 1966 order the Government was competent to denote an area where sugarcane is grown as a reserved area for factory. The sugarcane grown in that area is required to be sold to the allotted factory. The Government controls all aspects of the use of sugarcane grown in the reserved area. The 1966 order provides for fixation of minimum price of sugarcane payable by manufacturers of sugar to the growers. In determining the minimum price the Government is required to take into account (i) cost of production of sugarcane, (ii) return to the grower from alternative crops and the general trend of prices of agricultural commodities; (iii) the availability of sugar to the consumer at a fair price; (iv) the price at which sugar is sold by the producers; and (v) the recovery of sugar from sugarcane.

**F** The 1966 Control Order further provides for payment of additional price in addition to the minimum price. On determination of the price the same is required to be intimated in writing to the producers of sugar, growers, Co-operative Societies of Growers or the local Growers' Association. An appeal is provided to the Government of India against the determination of the additional price. Clause 5(3) of the 1966 Control Order provides that if the Central Government is satisfied that during any year a factory has made no profit or has made inadequate profit, that Government may exempt either wholly or partially any producer of sugar from payment of the additional price. The relevant authority under the 1966 Control Order fixed additional price payable by the appellants to the respondent. No appeal was preferred either by the appellant or the respondent.

**G** The appellants did not pay the additional price. Appellant made applications seeking exemption on the ground that the appellants had made inadequate profits. The Government exempted the appellants from paying whole of the additional price for the year 1961-62 and reduced the additional price for the year 1960-61 without giving any opportunity of being heard to the respondents.

**H** The respondents challenged the validity of the grant of exemption by filing a writ petition in the High Court. The High Court allowed the said writ petition on the ground that the order of the Central Government was violative of principles of natural justice, since no opportunity was given to the respondents to be heard in the matter.

Dismissing the appeal by certificate,

HELD: (1) Clause 5(1) provides for the payment of additional price and clause 5(3) provides for exemption from the payment of additional price. Clause 5(5) provides for filing an appeal to the Central Government by any person feeling aggrieved by the decision of the fixation of additional price. The power to grant exemption cannot be said to be independent of the provisions of clause 5 of the order. The object of 1966 Control Order is to promote sugar industry and to eliminate unnecessary impediments in the production of sugar. It also ensures a fair deal to the growers of the sugarcane. The provisions of the Control Order are intended to maintain harmony between the growers of sugarcane and the producers of sugar and to enable both of them to share profits reasonably. It is necessary to give opportunity to be heard both to the growers of the sugarcane as well as the producers of sugar when the Government exercises powers under 1966 Control Order for determining the additional price and granting exemption from payment of additional price. [744 H, 745 A-E]

(2) The grant of exemption from payment of price affects rights and interests of the growers of sugarcane. The order of exemption takes away rights which had accrued in favour of the growers of sugarcane. It is, therefore, necessary for the Government to consider the points of view or objections of the growers on the application made by the factories producing sugar seeking exemption from payment of additional price. [745F, G, 746A]

(3) The situations in which a duty will arise to act judicially according to natural justice cannot be exhaustively enumerated. A duty to act judicially will arise in the exercise of power to deprive a person of legitimate interest or expectation that additional price would be paid. The factors which point to an exercise of power judicially are the nature of interest to be affected, the circumstances in which the power falls to be exercised and the nature of the sanctions, if any, involved. [746 C]

(4) It is clear that the purpose and purport of the 1966 Control Order points to the inescapable conclusion that the sugarcane growers are to be heard not only when additional price is fixed but also when exemption is granted to factories from payment of additional price. [746D]

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 2070 to 2074 of 1970.

From the Judgment and Order dated 4th day of May 1970 of the Bangalore High Court in Writ Petitions Nos. 3958, 4035/68, 18 and 19 of 1969.

*V. S. Desai, P. C. Bhartari, J. B. Dadachanji, O. C. Mathur and R. Narain* for the appellant.

*A. K. Sen and S. S. Javali and B. P. Singh* for Respondent No. 1.

*S. N. Prasad and S. P. Nayar* for Respondent—Union of India.

The Judgment of the Court was delivered by

RAY, C.J. These appeals are by certificate from the judgment of the High Court of Mysore dated 4 May, 1970. The several respondent Co-operative Societies filed writ petitions in the High Court for quashing orders dated 11 September 1968 passed by the Government of India. The impeached orders granted exemption, partially or wholly, to the appellant under clause 5(3) of the Sugar Cane Control Order, 1966 (hereinafter referred to as the 1966 Control Order)

**A** from the payment of additional cane price fixed by the Price Fixation Authority under clause 5(4) of the 1966 Control Order. The High Court quashed the orders challenged by the respondents.

The use and supply of sugarcane is controlled under the provisions of the Essential Commodities Act, 1955. The Government of India promulgated the Sugar Cane Control Order on 27 August 1955.

**B** The 1955 Control Order empowered the Government, *inter alia*, to fix the minimum price payable by the manufacturer of sugar to the grower of sugarcane. The Government was competent to fix different prices depending on the areas and qualities of sugarcane or on the basis of recovery of sugar from sugarcane. In 1962 the Sugar Cane Control (Additional Powers) Act, 1962 came in existence. In pursuance of powers conferred by the 1962 Act the Central Government amended the 1955 Control Order by introducing clause 3A

**C** providing for payment of additional price for sugarcane purchased by producers of sugar during each of the four successive years beginning from 1 November 1958.

The 1955 Control Order was repealed and replaced by the Sugarcane Control Order, 1966 to which reference has already been made.

**D** The 1966 Control Order saved all orders made and actions taken under the repealed order. Under clause 6 of the 1966 Control Order the Government was competent to denote an area where sugarcane is grown as a reserved area for a factory. The sugarcane grown in that area is required to be sold to the factory allotted. The Central Government determines the quantity of sugarcane to be supplied by the growers in the reserved area and the quantity of sugarcane which the factory requires for crushing during any year. The growers are required to enter into agreements with the factory to supply sugarcane of the quantity fixed under the provisions of the 1966 Control Order. Restrictions are placed on the growers from using sugarcane grown by them for other purposes. The Government thus controls all aspects of the use of sugarcane grown in the reserved area. It can prohibit or restrict or otherwise regulate export of sugarcane from any

**E** area except under and in accordance with a permit issued in that behalf.

**F**

Clause 3 of the 1966 Control Order provides for fixation of minimum price of sugarcane payable by manufacturers of sugar to the growers. In determining the minimum price, the Government is required to take into account (a) cost of production of sugarcane, (b) return to the grower from alternative crops and the general trend of prices of agricultural commodities; (c) the availability of sugar to the consumer at a fair price; (d) the price at which sugar produced from sugarcane is sold by producers of sugar; and (e) the recovery of sugar from sugarcane.

**G**

Clause 5 of the 1966 Control Order provides for payment of additional price. Sub-clause (1) of clause 5 provides that in respect of sugarcane purchased by producers of sugar during each of the four successive years beginning from 1 November 1958 the producer is

**H**

required to pay an additional price in addition to the minimum price fixed under clause 3(1) of the 1966 Control Order. The additional price is fixed in accordance with the provisions of the Schedules to the Order. On determination of the price, the same is required to be intimated in writing to the producer of sugar, growers, Co-operative Societies of growers or the local growers association. Sub-clause (5) of clause 5 of the 1966 Control Order provides for an appeal to the Government of India from the decision determining additional price.

The relevant provision for purposes of the present appeals is sub-clause (3) of clause 5 of the 1966 Control Order. Sub-clause (3) is as follows :—

“If the Central Government is satisfied that during any year a factory has made no profit or has made inadequate profit, that Government, may by order in writing, exempt either wholly or partially, any producer of sugar from payment of the additional price due from him under sub-clause (1) in respect of sugarcane purchased for that factory during that year”.

The appellant in Civil Appeals No. 2070-2074 of 1970 is the factory situate at Hospet manufacturing sugar. The appellant buys sugarcane from growers in the area reserved for the said factory. The respondent is a co-operative society of growers of sugarcane who have supplied sugarcane to the appellant factory. The members of the societies entered into agreement with the appellant factory through the respondent societies for the supply of sugarcane. The societies advanced monies to the grower members for their agricultural operations. The societies are recognised both by the Government of India and the appellant factory for the purpose of the 1966 Control Order.

The minimum price fixed by the Government of India for the seasons subsequent to 1958-59 was said by the sugarcane growers to be inadequate. The growers felt that the factories manufacturing sugar were making profits from the sale of sugar and that the minimum price fixed by the Government for supply of sugarcane did not bear any rational relation to the market price or to the profits made by the producers of sugar. The growers experienced impact of increase in the cost of growing sugarcane and the restrictions placed by the Government preventing them from selling sugarcane to persons or at prices of their choice. The growers were also prevented from converting sugarcane to “gur” except in accordance with the terms of a licence to be obtained. In partial redress of the hardship caused to the sugarcane growers Parliament introduced clause 3A to the Sugar-Cane Control (Additional Powers) Act, 1962 for fixation of additional prices for sugarcane for four successive years commencing 1 November, 1958. The provision was thereafter incorporated in the 1966 Control Order.

The relevant Authority under the 1966 Control Order on 3 July, 1968 fixed the additional price payable by the appellant to the cane

**A** growers for sugarcane supplied during the seasons 1960-61 and 1961-62 at Rs. 4.16 and Rs. 6.09 respectively per metric ton. This was made payable in addition to the payments made by the factory to the growers during the said seasons. No appeal was preferred either by the appellant factory or by the respondent Cooperative Societies under clause 5 of the 1966 Control Order. The additional price fixed by the Authority thereby became final.

**B** The appellant, however, did not pay the additional price. The respondent received copies of communication dated 11 September 1968 sent by the Government of India to the appellant exempting it from making payment of the aforesaid additional price. It appears that the said order was made pursuant to applications made on behalf of the appellant on or about 11 July 1968 seeking exemption on the ground that the appellant had made inadequate profits. The Government communication dated 11 September 1968 stated that it was satisfied that the profits made by the appellant were inadequate. The Government wholly exempted the appellant from paying the additional price for the season 1961-62 and reduced the additional price for the season 1960-61 from 4.16 to 0.70 NP per metric ton.

**C** The respondent challenged the validity of the order of the Government granting exemption wholly or partially to the appellant. The High Court accepted the contention of the respondent on the ground that the impugned order was violative of principles of natural justice, because the Government failed to afford any opportunity to the growers to be heard in the matter.

**D** The respondent contended that the power of exemption affected the right of growers to get additional price for sugarcane supplied by them and that the Central Government was required to exercise the power judicially and in conformity with the principles of natural justice.

**E** Two questions arise for determination in these appeals. First, whether in view of the 1966 Control Order opportunity should have been given to the respondent when the Government wanted to grant exemption, wholly or partially, to the appellant from paying additional price. Second, whether the High Court was right in giving direction to the Government to consider giving of an opportunity to the respondent.

**F** The appellant sugar factory contends that the cane growers were not required to be heard when the Government granted exemption to the factories from payment of additional price. The respondent cane growers contend to the contrary.

**G** Clause 5 of the 1966 Control Order relates to additional price for sugarcane. Clause 5(1) of the Order speaks of payment of additional price found due in accordance with the provisions of the Schedule. Clause 5(3) of the 1966 Control Order speaks of exemption from payment of additional price. Clause 5(4) speaks of appointment by the Central Government of persons for determining the additional price under clause 5(1) of the 1966 Control Order. Clause

5(5) states that any producer of sugar or grower of sugarcane or growers' cooperative society who feels aggrieved by any decision of the person or authority referred to in sub-clause (4) may appeal to the Central Government. A

In the background of these provisions, the appellant contends that the power to grant exemption is where the Government is satisfied that in any year a factory has made no profit or has made inadequate profit and the same should be determined from the balance sheet and profit and loss accounts of a company and there is no obligation to hear any party. It is also said by the appellant that the determination of additional price and the exemption from payment of the additional price are separate matters independent of each other. The appellant further contended that right to additional price could not vest in the cane growers until the manner of payment had been decided upon by the Central Government under clause 5(6) of the 1966 Control Order. These contentions are unacceptable. B C

The provision for granting exemption is part of the procedure prescribed by clause 5 of the 1966 Control Order. The power to grant exemption cannot be said to be independent of the provisions under clause 5 of the Order. The object of the 1966 Control Order is to promote sugar industry and to eliminate unnecessary impediments in the production of sugar. It also ensures a fair deal to the growers of sugarcane. The provisions of the Control Order are intended to maintain harmony between the growers of sugarcane and the producers of sugar and to enable both of them to share profits reasonably. Therefore, the power conferred on the Government is required to be exercised having regard to the viewpoints of the growers of sugarcane as well as the producers of sugar. It is necessary to give opportunity to the growers of sugarcane as well as the producers of sugar to be heard when the Government exercises powers under 1966 Control Order for determining the additional price and granting exemption from payment of additional price. D E

The grant of exemption from payment of price affects rights and interests of the growers of sugarcane. The Control Order contains elaborate machinery for fixation of additional price having regard to all relevant factors. The additional price fixation authority afforded opportunity to both the growers of sugarcane as well as the producers of sugar to be heard in the determination of the additional price. The subsequent order by the Government granting exemption to the factories for payment of additional price takes away rights which had accrued in favour of the growers of sugarcane. F G

The manner of payment of additional price under clause 5(6) of the 1966 Control Order does not affect the right and interest of growers. In providing for payment of additional price, the additional price fixation authority takes into account the relevant considerations relating to the conditions of sugarcane growers as well as the promotion of the sugar industry during the relevant period. The additional price fixation authority also considers the conditions and circumstances relating to the appellant factory in determining the additional H

**A** price payable. It is, therefore, necessary for the Government to invite the points of view or objections of the growers on the application made by the factories producing sugar seeking exemption from payment of additional price. It is equally necessary for the Government to hear the growers of sugarcane in order to satisfy itself as to the *bona fides* and accuracy of the appellant's claim for exemption. The growers should be given an opportunity to show whether the claim by the appellant for exemption from payment of additional price should or should not be granted.

**B**

**C** The power to grant exemption to factories from payment of additional price is intimately connected with the right of sugarcane growers to claim additional price. The situations in which a duty will arise to act judicially according to natural justice cannot be exhaustively enumerated. A duty to act judicially will arise in the exercise of a power to deprive a person of legitimate interest or expectation that additional price would be paid. The factors which point to an exercise of powers judicially are the nature of the interest to be affected, the circumstances in which the power falls to be exercised and the nature of the sanction, if any, involved.

**D** It is clear that the purpose and purport of the 1966 Control Order, the scheme of having sugarcane growing areas reserved for factories and in particular, the payment of additional price point to the inescapable conclusion that the sugarcane growers are to be heard not only when additional price is fixed but also when any exemption is granted to factories from payment of additional price.

**E** For these reasons, the judgment of the High Court is affirmed. The appeals are dismissed. Each party will pay and bear its own costs.

P.H.P.

*Appeals dismissed.*