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RATHI KHANDSARI UDYOG ETC.

v.

STATE OF U.P. AND ORS. ETC.

B

February 22, 1985.

[S. MURTAZA FAZAL ALI, A. VARADARAJAN AND M.P. THAKKAR, JJ.]

C *Constitution of India, 1950—Articles 14, 19(1) (f) and (g), 31, 265 and 301.*

U.P. Krishi Utpadan Mandi Adhiniyam Act, 1964, ss. 2 (a), 2(p), 17 (iii), and Rule 67 of the Rules made under s. 40 of the Act—S. 2(a)—Agricultural Produce—Amendment thereof by U.P. Krishi Utpadan Mandi (Amendment and Validation) Act 1970—"Khandsari Sugar" manufactured by open pan D *process—Whether different from "Khandsari" produced by agriculturists indigenously—S. 2 (p)—'Producer'—Whether excludes the article produced by the petitioners from the coverage of the Act—S.17 (iii)—Market Committee (Mandi Samiti)—Whether competent to levy and collect Market fee—Rule 67—Whether petitioners liable to obtain licence and pay licence fee—Protection of producers from exploitation—Whether principal object of the Act.*

E *Essential Commodities Act, 1955, s.3—U.P. Khandsari Manufacturing Order, 1975—Cl. 2(f)—"Khandsari Sugar"—Scope of.*

Section 2(a)—Validity of—Whether violative of Arts. 14, 19(1) (f) and (g), 31, 265 and 301 of the Constitution.

F An Ordinance, U.P. Krishi Utpadan Mandi Adhiniyam, 1964 (Amendment and Validation Ordinance No. 1969) passed on November 5, 1969 amended the definition of "agricultural produce" embodied in s. 2(a) of the U P. Krishi Utpadan Mandi Adhiniyam Act 1964 and 'gur, rab, shakkar, khandsari and jaggery' were included in the amended definition. This Ordinance was subsequently converted into U.P. Krishi Utpadan Mandi (Amendment and Validation) Act 1970. Thus 'Khandsari' stood covered G by the definition of s. 2 (a) of the Act so amended.

The petitioners, who are owners of Khandsari factories, have alleged that what they produce is "Khandsari Sugar" and not 'Khandsari', which is covered by the definition of "agricultural produce". It was contended; (1) that they are not liable to obtain a licence under Rule 67 of the Rules H framed under s. 40 of the Act or to pay the licence fees (Rs. 100 per

annum) payable for such licence; (2) that the Market Committee (Mandi Samiti) constituted under s. 12 of the Act cannot levy and collect market fee of 1% of the value, under s. 17(iii) of the Act, on the transactions in respect of what they produce, from the traders who purchase the product from them ; and (3) that s. 2 (a) of the Act is discriminatory and violative of Article 14 of the Constitution. A

Dismissing the petitions, B

HELD : (*Per Majority*)

1. The definition embodied in s. 2(a) of the Act is an inclusive one. It in terms provides that 'Khandsari' is included within the coverage of "agricultural produce". The Act, however, does not define the term 'Khandsari'. It is not sufficient to contend that what the petitioners produce is "Khandsari Sugar" and not 'Khandsari'. It has also to be shown by them that what they produce is popularly or commercially known as "Khandsari Sugar" and not as "Khandsari". And thus they have failed to establish. It is not shown that "Khandsari Sugar" is the nomenclature employed in the world of trade and commerce in respect of their product. Neither the traders, nor the consumers are shown to have done so in their day-to-day dealings. [989F-H; 990A] C D

2. The term "Khandsari Sugar" owes its origin to U.P. KHANDSARI SUGAR MANUFACTURING ORDER of 1977 issued under s. 3 of the ESSENTIAL COMMODITIES ACT, 1955. "Khandsari Sugar" was defined by cl. 2(f) of the said Order as meaning "sugar containing more than 90% sucrose and manufactured by open pan process including bels." It is a statutory definition enacted for the 'purpose' of the aforesaid Control Order which uses the expression "Khandsari Sugar". It has nothing to do with the meaning and content of the term 'Khandsari' as used by the trade in U.P. [990B-C] E

2. (i) It is unnecessary for the present purpose to cite all the decisions. Or to undertake a journey through the factual hinterland of each decision. Or to turn the headlights on the observations made in each of the decisions. For, the principle, though garbed in different apparel, is simply this. In legislations pertaining to the world of business and commerce, the dictionary to refer to is the dictionary of the inhabitants of that world. What they understand by the term 'Khandsari' is precisely what that term means in the statute designed to regulate their dealings and transactions. The best test therefore is to ask the question what they themselves have understood by the term 'Khandsari, how they themselves have interpreted it, and on what basis they themselves have moulded their own conduct, for all these years. The factory owners similarly situated as petitioners as also the traders in general have understood the term 'Khandsari' as being applicable to the Khandsari produced by the factories by open pan process as also to Khandsari prooduced indigenously. [990E-G] F G

Commissioner of Income-tax, Andhra Pradesh v. *Taj Mahal Hotel*, (1971) 82 I.T.R. 44 at p. 47 and *Porrits & Spencer (Asia) Ltd.* v. *State of Haryana*, [1979] 1 S.C.R. 545, relied on. H

A 2. (ii) Inclusion of Khandsari in the definition of "agricultural produce" by virtue of amendment of s. 2(a) was challenged by a few commission agents carrying on business of sale and Purchase of Khandsari in 1969 by instituting writ petitions in the High Court of Allahabad. However, none of the grounds of challenge pertained to the aspect relating to the meaning and content of the term 'Khandsari'. The petitions were dismissed by a Single Judge and that decision was confirmed by the Division B Bench. [989C-D]

2. (iii) Factory owners producing Khandsari have been obtaining licence under the Act and paying, without demur, market fee at 1% of the value since 1969-70 till 1981, when fresh challenge was made through the instant petitions. For more than ten years even the petitioners have not felt that 'Khandsari' means something other than what they produce. It C is not shown that in the popular or commercial sense, the product is not known as 'Khandsari' but is known as "Khandsari Sugar". The term "Khandsari Sugar" saw the light of day seven years after the Act was enacted in 1970 when U.P. Khandsari Sugar Order of 1977 was born and the artificial nomenclature was coined for the restricted purpose of the order. There is no material even to show that this nomenclature was known to the petitioners or to the traders themselves there to before.
D [990H; 991C; E-F]

3. The Legislature has in terms encompassed 'Khandsari' within the definition of s. 2(a) of the Act. And the term 'Khandsari' is sufficiently wide to cover all varieties of Khandsari including the article produced by the factories like those of the petitioners. Besides, the basic premise assumed by the petitioners that the object of the Act is merely to protect the producers from exploitation is fallacious. This is one of the objects E and not the sole or only object of the Act. The Act has many more objects and a much wider horizon, and even transactions where both the sides are traders and neither side is agriculturist, are brought within the coverage of the Act. [992A-D]

Ramesh Chandra v. *State of U.P.*, [1980] 3 S.C.R. 104 and *Ramesh Chandra Kachardas Porwal & Ors.* v. *State of Maharashtra & Ors. etc.*, [1981] F 2 S.C.R. 866, relied on.

There is nothing in the definition of 'Producer' contained in s. 2(p) of the Act which would justify overriding the clear language of the statutes read in the light of the perspective of the Act and the history of the levy. While the term 'Khandsari' has not been defined, it is obviously wide enough to cover Khandsari produced by any process regardless of its quality G or variety. [994D-E]

5. This Court has had several occasions to deal with a similar problem in the context of taxing statutes. And this Court has consistently taken the view that in the matter of classification the Legislature has a wide discretion in selecting the persons or objects it will tax, and that a statute is not open to attack on the ground that it taxes some persons or objects and not others. 'Everything-or-nothing' argument is basically H fallacious. For, the Legislature may tax or regulate the trade in some

objects and not in others. Or may bring within its net some objects initially and may cast the net wider later on. Or may tax or regulate the trade in only such objects which it considers expedient or worthwhile. The decision, essentially a policy decision, may depend on several factors. Factors, such as, the felt necessity for such an impost or regulation of a trade in a particular article, likely impact of the decision on the trade, industry, or consumer, viability of the same from the stand point of its own management resources. Or from the angle of the net advantage to be secured in the balance-sheet of pros and cons taking into account the anticipated administrative and management imputs required to be invested in the exercise. In substance, it is a policy decision turning on numerous and complex factors. [99B-E]

5. (i) It is not for this Court to question why Khandsari produced by the petitioners is included when sugar produced by the Mills is not so included. It is not a question to which we can legitimately address ourselves, for, essentially it is a question of legislative wisdom and legislative policy dictated by countless and complex considerations. The Court cannot, and will not, substitute its own wisdom in place of the legislative wisdom in such matters. The Court will not impose on itself this responsibility, if not for any other reason, than for the reason that it is beyond its province. Hence s. 2(a) of the Act is not discriminatory and violative of Article 14. [996G-H; 997A]

East India Tobacco Co. v. *State of Andhra Pradesh*, [1963] 1 S.C.R. 404, relied on.

Willie on Constitutional Law p. 857, referred to.

Per A. Varadarajan, J. (Dissenting)

1. What the petitioners produce in their modern Khandsari mills by the open pan process is Khandsari sugar, an industrial product like plantation white sugar and not Khandsari which is produced by agricultural producers in the indigenous method and the levy of market fee on sales of khandsari sugar under the Adhiniyam is unwarranted as the Adhiniyam is intended for the protection of agricultural producers in the disposal of their products and only Khandsari produced by agricultural producers is included in the definition of agricultural produce" in s. 2(a) thereof and not Khandsari sugar. [986F-G]

2. A manufacturer producing Khandsari Sugar by the modern method in the open pan process is not a producer within the meaning of s. 2(p) of the Adhiniyam. [980E]

3. The object of the Adhiniyam as seen from the prefatory note and preamble is to protect the agricultural producer from exploitation. Protection of any industrial producer is not the object of the Adhiniyam. [979G]

4. The Khandsari Sugar produced by the petitioners in their mills with the aid of power in the open pan process by employing large number of employees to whom the Industrial Disputes Act, Minimum Wages Act, Factories Act. Employees Provident Fund Act and similar enactments apply

A is an industrial product which is very different from Khandsari produced by agriculturists or sugarcane growers in the old indigenous method. [982E-F]

5. The Adhiniyam originally intended to protect the interests of agricultural producers has not become a marketing legislation under entry 28 of List II in the Seventh Schedule by the mere fact of inclusion of one B or more industrial products in the definition of agricultural produce in s. 2(a) of the Adhiniyam. [983H; 984A]

6. The prefatory note and the preamble can be looked into in the present case as there is dispute between the parties on the question whether "khandsari sugar" produced by the petitioners, which is not included in C the schedule or definition of agricultural produce in the Adhiniyam, while "Khandsari" is mentioned in the definition of agricultural produce in s. 2(a) thereof can be the subject matter of levy of market fee under the Adhiniyam. [984F-G]

7. The principle underlying the levy of tax cannot be made appli- D cable to the levy of market fee under the Adhiniyam. Both Plantation While Sugar and Khandsari Sugar are industrial products and there is discrimination against Khandsari Sugar in seeking to subject it to the levy under the Adhiniyam leaving out plantation White Sugar. [988B]

Laxmi Khandsari Etc. v. *State of U.P. & Others,* [1981] 3 SCR, 92 E *Paunakram* v. *State of Punjab,* AIR 1975 SC 187 and *Andhra Sugars Ltd. & Anr. etc.* v. *State of Andhra Pradesh & Ors.,* [1968] 1 SCR, 705, referred to.

ORIGINAL JURISDICTION : WP. Nos. 1347-60/81, 132-143, 3405-16, 3420-22, 3423-25 of 1980, 806-18 of 1981, 4251, 9500-05, 9511-13, F 9514 of 1981, 21-23, 37-43, 45-56, 63, 91-111, 166-67, 174, 181-192 of 1982, 407-11 of 1979, 412-415, 416-18 of 1979, 193-220, 237-48, 825-36, 721-722 of 1982, 723-39, 319-30, 969-78, 2171-73 of 1982 and 3864-69 of 1980, 1227-33 of 1981, 5520-22 of 1980, 1001-07 of 1981, 1109-30, 1384, 1453-62, 1469 of 1981, 805-24, 866, 972, 1453-62, 6498, 4667-68, 975-83, 854, 984, 1469-78, 787, 1319-24, 1400-02, 1504-05, 1608-11, G 1621-25, 1934-63, 2172-77, 2228-31, 2251-53, 2374-75, 2327-61, 2556-65, 2612-13, 2625-27, 2624, 3070-88, 3178-95, 985, 4158-65, 4527-32, 5113-19, 9196-98 of 1982, 5727, 8397, 9583, 9719-22 of 1982, 8262-67 of 1981, 10039, 10223 of 1982, 2682-84 of 1983, 3885-86 of 1983, 66-67, 68-69, 1139-2759 of 1983, 2379 of 1982, 273, 1119 of 1983, 7993 of 1982, 1172 of 1983, 6498 of 1982.

H (Under Article 32 of the Constitution of India)

FOR THE APPEARING PARTIES

Shantr Bhushan, R. K. Garg P. R. Mridul R. K. Jain, Pradeep Kumar Jain, B. R. Kapoor, S. R. Srivastava, P. H. Parekh, Miss Nisha Srivastava, Hemant Sharma, Miss Indu Sharma, K. K. Mohan, and *Geetanjali Mohan.*

O. P. Rana, D. D. Thakur, E. C. Agarawala, Raju Ramachandran, R. Sathish, V. K. Pandita and *R. Rana*

Dr. L. M. Singhvi, L. N. Sinha, Y. S. Chitale, and *G. N. Dikshit.*

Miss Shobha Dikshit, Pradeep Mishra, S. K. Kulshrestha, and *A. M. Singhvi, Advocates Ravindra Bana, Sarva Mittra, Rajiv Datta, B. B Tawakley, R. B. Mebrotra, Pramod Swarup, R. N. Poddar & N. N. Sharma.*

The following Judgments were delivered

VARADARAJAN, J. Writ Petitions 1347 to 1360 of 1981 and Writ Petition 174 of 1982 are by manufacturers of khandsari sugar in the open pan process and sellers thereof in Uttar Pradesh. Writ Petitions 21 to 23 of 1982, Writ Petitions 3178 to 3195 of 1982, Writ Petitions 3178 to 3195 of 1982, Writ Petitions 4527 to 4532 of 1982 and Writ Petition 3890 of 1983 are by traders in that product in U. P. The pleadings in W. Ps. 1347 to 1360 of 1981 were referred to by the learned counsel for the parties when common arguments were advanced in all the writ petitions. Therefore, the pleadings in those writ petitions alone are referred to in this judgment.

These W. Ps. 1347 to 1360 of 1981 under Article 32 of the Constitution are for declaring the provisions of the U. P. Krishi Utpadan Mandi Adhiniyam, 1964 as *ultra vires* the Constitution and for restraining the respondents from realising market fee and licence fee from the petitioners under the provisions of that Adhiniyam (hereinafter referred to as 'the Adhiniyam').

The case of the petitioners/firms which manufacture Khandsari sugar by the open pan process in the State of Uttar Pradesh and sell the same in that State is this:

A In the process of manufacture of Khandsari sugar there is not only a physical change of the sugarcane used but also a chemical change and the white crystalline sugar of 90 per cent sucros purity is obtained after drying, grading and vagging by eliminating all the ingredients of sugarcane except sucros. But in the case of desi khandsari, gur, jaggery, rab and shakkar which are all manufactured B from raw sugarcane juice, pectins, live saps, motals, minerals, nitrogenous compounds, waxes and salts are not removed and there is no chemical change in the manufacturing process. The Adhiniyam was enacted to reduce multiple trade charges and provide amenities to the producers and sellers of agricultural produce, for certification of accurate weights and scales and for the establishment of market C committees to ensure that the agricultural producer has a say in the matter of utilisation of the market funds. The Adhiniyam applies to agricultural products which according to s. 2 (a) are 'such items of produce of agriculture, horticulture, viticulture, sericulture, pisciculture, animal husbandary or forest, as are specified in the D schedule, and include anadmixture of two or more such items and also include any such item in processed form and further include gur, rab, shakkar, Khandsari and jaggery'. The Adhiniyam does not define khandsari sugar but it is defined in clause 2 of the U. P. Khandsari Sugar (Levy) Order, 1975 as "whole crystalline sugar containing more than 90 per cent and manufactured at a sulphitation E unit by open pan process including a bel". The khandsari sugar produced by the petitioners who hold licence for operating hydraulic power crushers is not khandsari but crystalline sugar as produced by sugar mills. The sugar produced by the petitioners is physically and chemically different from sugarcane which is one of the items specified in the schedule to the Adhiniyam and also F from gur, rab, jaggery and khandsari and cannot be treated as a processed form of sugarcane. Therefore, the Adhiniyam cannot apply to the product manufactured by the petitioners which is plantation white sugar. The petitioners/firms which are producers of sugar are not liable to pay market fee under the Adhiniyam, s. 17 (iii) (b) whereof provides that the market committee shall have G power to levy and collect market fee which shall be payable on transactions of sale of specified agricultural produce in the market area at such rates being not less than one per cent and not more than one and a half per cent of the price of the agricultural produce so sold as the State Government may specify by notification.

Section 17 (iii) is *ultra vires* the Constitution as it permits H excessive delegation of legiilative power and does not lay down any

guideline for the State Government fixing the market fees and only market committees rendering services can determine the quantum of market fees. The illegal levy of market fees on the petitioners is violative of Articles 19 (1) (f) and 301 of the Constitution. The action of the respondents in seeking to apply the provisions of the Adhiniyam to the petitioners leaving out other manufacturers similarly situate is violative of Art. 14 of the Constitution. Section 8 of the Adhiniyam is violative of Art. 14 as it does not provide any guideline regarding the basis on which the State Government can include or exclude any agricultural produce from the list of notified commodities under s. 6.

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The market fees and licence fees are in the nature of payments for services rendered. But the market committees render no service at all to the petitioners and therefore the levies are really in the nature of tax. The levies deprive the petitioners of their right to property without any authority of law and are therefore violative of Articles 265, 31 and 19 (1) (f) and (g) of the Constitution. It is in these circumstances that the petitioners have prayed for declaration of the provisions of the Adhiniyam as being *ultra vires* the Constitution and for the issue of a writ of mandamus restraining the respondents from realising market fee and licence fee from the petitioners under the Adhiniyam.

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The contentions of the Mandi Samiti/respondents who oppose the petitions are these:

The petitioners who are manufacturers of khandsari/khandsari sugar are fully covered by the Adhiniyam in view of the definition of 'agricultural produce' in s. 2 (a). Khandsari is mentioned in schedule 'Kha' to the notification No. 584/XII-8-104/76 dated 11.4.1978. Khandsari sugar is not sugar as is evident from the definition of sugar in s. 2 (f) of the Sugar (Regulation of Production) Act. 1961 according to which sugar means any form of sugar whether wholly or partially manufactured but does not include khandsari sugar, that is to say, sugar in the manufacture of which neither a vacuum pan process nor a vacuum operator is employed; or palmyra sugar, that is to say, sugar manufactured from jaggery obtained by boiling the juice of palmyra palm. 'Khandsari' is the short form of 'Khandsari sugar' in the Adhiniyam and the notification, and there is nothing like khandsari different from khandsari sugar in any of the concerned laws or in common parlance. There is only one khandsari and it is called khandsari sugar and it is manufactured

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by mechanical power process, The word 'sugar' has been used everywhere for the sugar manufactured by the vacuum pan process by mills and factories and the words 'khandsari sugar' have been used for the material produced by open pan process In the Sugarcane (Control) Order, 1966 by clause 2 (d), khandsari sugar is defined as sugar produced by the open pan process. Khandsari sugar is defined in clause 2 (f) of the U. P. Khandsari Sugar Manufacturing Order, 1967 as sugar containing more than 90 per cent sucros and manufactured by the open pan process including bels.

There is no chemical change in the process adopted by the petitioners in the manufacture of Khandsari sugar and there is nothing like desi Khandsari sugar. What the petitioners call desi khandsari is shakkar produced by manual efforts. It is true that khandsari sugar manufactured by the petitioners contains more than 90 per cent sucros but it is denied that the sugar manufactured by the petitioners is not khandsari or that it is crystalline sugar as produced by sugar mills or that the khandsari sugar produced by the petitioners is not physically and chemically different from the sugar produced by mills. The produce manufactured by the petitioners is processed form of sugarcane, namely, sugarcane from which the chaff has been removed and the sweet material has been retained for human consumption. Gur, rab, jaggery and khandsari sugar are all manufactured by the open pan process while sugar produced by mills is manufactured by the vacuum pan process. The producers of khandsari sugar by open pan process and the producers of sugar by vacuum pan process have to take out licences under different orders, namely, U. P. Khandsari Sugar Manufacturing Order, 1967 and U. P. Vacuum Pan Sugar Factories Licensing Order, 1969. Thus, khandsari sugar produced by the petitioners is different from sugar produced by sugar mills and it is fully covered by s. 2 (a) of the Adhiniyam.

Market fee is not claimed from the petitioners in any manner different from the one stipulated in s. 17 (iii) (b) of the Adhiniyam. Section 17 (iii) (b) is not *ultra vires* the Constitution and does not suffer from any excessive delegation of legislative power. The levy of market fee and licence fee is not violative of any constitutional provision. Art. 19 (1) (f) does not exist any longer and Art. 301 does not confer any fundamental right on the petitioners. There is no discrimination against the petitioners and s. 8 of the Adhiniyam is not violative of Art. 14. The market fee and licence fee are fees

and not taxes. A major portion of the funds of the market committees is applied for development of the market area. A

The Rajya Krishi Utpadan Mandi Parishad (hereinafter referred to as 'the Parishad'), impleaded as respondent in the petitions has filed separate counter-affidavit raising similar contentions as the market committees. The additional contentions raised by that Board which also opposes the petitions are these : B

The original definition of agricultural produce in s. 2 (a) of the Adhiniyam did not contain the words "and further includes gur, rab, shakkar, khandsari and jaggery". These words were added in the definition by the U. P. Amendment Act 10 of 1970 in order to remove anomalies in the words "processed agricultural produce". The Government issued the said notification No. 584/XII-8-10 1/76 dated 11. 4. 1978 after considering all the objections raised, specifically mentioning Khandsari along with gur, rab, shakkar and jaggery in the list of 115 commodities liable for the levy of market fees. The sale of khandsari is free without any Government control and it is effected in the market areas by commission agents by mutual negotiation or open auction while a large part of the sugar produced by the vacuum pan process is controlled by the Central Government. Sugar and khandsari are distinct and different from each other. The sugar produced in vacuum pan process is standarised as per India Sugar Standards and graded into A30, B30, C30, D30, E30, A29, B29 C29, D29 and E29 whereas khandsari sugar produced by the open pan process is called khandsari, khandsari sugar, rab and sugar in the market. There is no levy on khandsari and it is sold in the open market whereas 65 per cent of the sugar produced in the mills by the vacuum pan process is taken by the Central Government for feeding the public distribution system by levy and the remaining 35 per cent alone is left with the factories for free sale through wholesale dealers approved under the control orders. The producers of khandsari sugar are not liable to pay the impugned market fee. They are liable to pay it only if they also hold licences as commission agents or wholesale dealers and sell the product. C D E F G

Mr. Shanti Bhushan, learned counsel for the petitioners advanced arguments in these petitions under three main heads, namely (i) whether khandsari sugar manufactured by the petitioners in their mills by the open pan process is an agricultural produce, covered by the Adhiniyam as amended by the U. P. Act 10 of 1970; (ii) whether khandsari sugar manufactured by the petitioners in their H

A industrial units employing a large number of workmen to whom the Industrial Disputes Act, Employees Provident Fund Act, Factories Act and Minimum Wages Act apply and which is subject to levy of excise duty under the Sugar (Special Excise Duty) Act, 1959 is subject to the levy of market fee under the Adhiniyam and (iii) whether on account of the interpretation of the Adhiniyam, khandB sari sugar manufactured by the petitioners could be said to be subject to the levy of market fee under the Adhiniyam there is any difference between khandsari sugar produced by the petitioners in the open pan process, and the plantation white sugar produced by the other mills in the vacuum pan process, and there is no discriC mination between khandsari sugar sought to be subjected to the levy of market fee under the Adhiniyam and the plantation white sugar produced by the vacuum pan process which is not subject to the levy under the Adhiniyam. He clubbed his arguments on points (i) and (ii) and submitted that khandsari sugar produced by the petitioners in their mills by the open pan process is not an agriculD tural produce contemplated to be covered by the provisions of the Adhiniyam for the purpose of levy of the market fee as it is not produced by the agricultural producer but produced in mills employing modern methods though under the open pan process. On the third point he submitted that there is no difference between the khandsari sugar produced by the petitioners in their mills by the E open pan process and the plantation white sugar produced by the other mills by the vacuum pan process except that khandsari sugar is produced by the open pan process while the plantation white sugar is produced by the vacuum pan process and the difference in the composition of the two products is only as regards CAO, filterability and conductivity and consequently there is discrimination hit by F Art. 14 of the Constitution in leaving plantation white sugar out of the levy and seeking to subject the khandsari sugar produced by the petitioners-mills alone to the levy of market fee under the Adhiniyam.

On the other hand, Mr. L. N. Sinha, learned counsel for the G Parishad submitted that the original object of the Adhiniyam was protection of agricultural produce as originally defined in the Adhiniyam and that the position has changed now and it has become a marketing legislation covered by entry 28 of List II (Market) of the Seventh Schedule to the Constitution. He further submitted that if the Adhiniyam has become a marketing legislation as contended by him industrial produce also can be included in the schedule of H produce appended to the Adhiniyam and khandsari is genus and

khandsari sugar is a specie and it is liable to be subjected to the levy of market fee under the Adhiniyam. As regards discrimination Mr. Sinha submitted that similarity is one thing and identity is another and that Art. 14 will be attracted only in the case of identity and there is difference between khandsari sugar and plantation white sugar and therefore there is no question of discrimination.

Mr. D. D. Thakur, learned counsel for the Market Committees submitted that it is not the only object of the Adhiniyam to benefit the agricultural producer, but a number of other objects are noticeable in the Adhiniyam and that if the object is to protect the agricultural producer alone the levy of market fee would have been confined to the first sale alone. He further submitted that the Adhiniyam covers sales by producers to traders and sales by traders to other traders subject to the requirement that what is sold is an agricultural produce and no market fee is leviable on retail sales etc. having regard to the proviso to s. 17 of the Adhiniyam. He submitted that the levy is not on khandsari producers but on khandsari traders and that what is contained in the preamble to the Adhiniyam is slightly different from the scheme of the Adhiniyam, and s. 2 (a) of the Adhiniyam has to be looked into independently of the preamble which in turn can be looked into only in case of ambiguity. He too submitted that khandsari is a genus and khandsari sugar is a specie. He however admitted that agriculturists producing khandsari without the use of power need not obtain licence for its manufacture while producers of khandsari sugar by the open pan process in the khandsari industry are bound to obtain licence. He contended that what is produced by the petitioners would fall within the ambit of s. 2 (a) of the Adhiniyam. On the question of discrimination he submitted that plantation white sugar manufactured by the vacuum pan process does not require regulation, unlike khandsari sugar produced by the open pan process and that if that is so there is no question of discrimination in not subjecting the plantation white sugar to the levy of market fee under the Adhiniyam.

Dr. Y. S. Chitale, learned counsel for the Parishad, Samiti and Mandi, the respondents in W. Ps. 1348 to 1360 of 1981 submitted that s. 2 (a) of the Adhiniyam deals also with traders as held in *Laxmi Khandsari Etc. Etc. vs. State of U. P. and Others*(1) and that what the petitioners produce is khandsari though it may

(1) [1981] 3 S. C. R 92.

A be more refined than khandsari produced by the agriculturists without the aid of power. On the question of discrimination he submitted that whatever was considered necssary to be regulated was included in the schedule to the Adhiniyam and that there is no discrimination in not subjecting plantation white sugar produced by the vacuum pan process to the levy of market fee under the B Adhiniyam.

The prefatory note to the Adhiniyam as extracted from the Statement of Objects and Reasons may be noted. It reads:

> "The present chaotic state of affairs as obtaining in C agricultural produce markets is an acknowledged fact. There are innumerable charges, levies and exactions which the agricultural producer is required to pay without having any say in the proper utilisation of the amount so paid by him. In matters of dispute between the seller and the buyer, the former is generally put at a disadvantage by being D given arbitrary awards. The producer is also denied a large part of his produce by manipulation and defective use of weights and scales in the market. The Government of India and the various committees and commissions appointed to study the condition of agricultural markets in the country have also been inviting the attention of the State Govern- E ment from time to time towards improving the conditions of these markets. The proposal to enact a marketing legislation was first taken up in 1938; but it could not go through as the then Ministry went out of office soon after its inception. The Planning Commission stressed long ago that legislation in respect of regulation of markets should F be enacted and enforced by 1955-56. Most of the other States have already passed legislation in this respect. The proposed measure to regulate the markets in this State has been designed with a view to achieving the following direction—
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> (i) to reduce the multiple trade charges, levies and exactions charged at present from the *producer-sellers*;
>
> (ii) to provide for the verification of accurate weights and scales and see that the *producer-seller* is not H denied his legitimate due;

(iii) to establish market committees in which the *agricultural producer* will have his due representation; A

(iv) to ensure that the *agricultural producer* has his say in the utilisation of market funds for the improvement of the market as a whole; B

(v) to provide for fair settlement of disputes relating to the sale of *agricultural produce*;

(vi) to provide amenities to the *producer-seller* in the market;

(vii) to arrange for better storage facilities; C

(viii) to stop inequitable and unauthorised charges and levies from the *producer-seller;* and

(ix) to make adequate arrangements for market intelligence with a view to posting the *agricultural producer* with the latest position in respect of the markets dealing with *his produce*". D

(emphasis supplied)

The prefatory note shows that the object of the Adhiniyam is to save the *agricultural producer* from innumerable charges, levies E and exactions and to enable him to have a say in the proper utilisation of the amounts paid by him, to reduce the multiple charges, levies exactions charged from *producer-sellers* and generally to help the *agricultural producer* to sell his produce to his best advantage. The objects set out in the prefatory note are reflected in a concised form in the preamble to the Adhiniyam which says that it is "An Act to provide for the regulation of sale and purchase of *agricultural* F *produce* and for the establishment, superintendence and control of markets *therefor* in Uttar Pradesh". The preamble also speaks of the necessity to provide for the regulation of sale and purchase of *agricultural produce* and the establishment, superintendence and control of markets *therefor* in Uttar Pradesh. Thus the object of the G Adhiniyam as seen from the prefatory note and preamble is to protect the *agricultural producer* from exploitation. Protection of any industrial producer is not the object of the Adhiniyam.

Section 2(p) of the Adhiniyam defines a "producer" as meaning "a person who, whether by himself or through hired H

A labour, produces, rears or catches any agricultural produce, not being a producer who also works as a trader, broker or dalal, commission agent or arhatiya or who is otherwise ordinarily engaged in the business of storage of *agricultural produce*". *Agricultural* produce is defined in s. 2(a) of the Adhiniyam as meaning "such items of produce of agricultur, horticulture, viticulture, agriculture, siriculture, B pisciculture, animale husbandary or forest as are specified in the schedule and includes admixture of two or more of such items and also includes any such item in processed form and further includes gur, rab, shakkar, khandsari and jaggery". The words "and further includes gur, rab, shakkar, khandsari and jaggery" have been introduced into s. 2(a) of the Adhiniyam by the U.P. Amendment C Act 10 of 1970. Trader is defined in s. 2(y) of the Adhiniyam as meaning "a person who is engaged in buying or selling *agricultural produce* as a principal or as a duly authorised agent of one or more principals and includes a person engaged in producing *agricultural produce*". Thus it is seen from the definition of producer and trader in the Adhiniyam that emphasis is on the product produced, reared D or caught by agriculturists whether by their own or through hired labour and that such producer does not include a producer who also works as a trader, broker, dalal, commission agent or arhatiya or who is otherwise ordinarily engaged in the business of storage of *agricultural produce*. Therefore, it is not possible to hold that a manufacturer producing khandsari sugar by the modern method in E the open pan process is a producer within the meaning of s. 2(p) of the Adhiniyam. The schedule to the Adhiniyam consists of 17 5 items including paddy, honey, silk, eggs and ghee which were in the schedule from the inception. But, as stated earlier "Khandsari" is one of the items introduced into the definition of agricultural produce in s. 2(a) of the Adhiniyam by the Amendment Act 10 of F 1970. It is seen from Annexure VIII to the counter-affidavit of the respondent-Parishad filed in W. Ps. 1347-1360 of 1981 that "The technique of sugar manufactured through the indigenous process without the use of complicated machinery has been known in this country from time immemorial. The sugar thus produced is known G as khandsari". In the counter-affidavit of Shri Ram Sharan, Deputy Director (Marketing) of the Parishad filed for the petitioners' additional affidavit it is admitted that farmers and sugarcane growers produce, what he calls, khandsari sugar with the help of small electric motors, diesel engines or their own tractors. Mr. Shanti Bhushan submitted that khandsari introduced in s. 2(a) of the H Adhiniyam by the Amendment Act 10 of 1970 is khandsari produced

by agriculturists and sugarcane growers in the old and primitive method and not khandsari sugar produced in khandsari mills in the modern sulphitation open pan process.

Annexure VI to the counter-affidavit filed by the Parishad in W. Ps 1347-1360 of 1981 is the report of the Director of National Sugar Institute, Government of India, Kanpur regarding the approximate composition of khandsari sugar produced by the modern sulphitation process and that of plantation white sugar produeed by the vacuum pan sugar factories. It is extracted for ready reference :

Particulars	*Vacu im pan sugar*	*Khandsari sugar*
Pol	99.8 to 99.95	99.4 to 99.9
Reducing sugars	0.04 to 0.25	0.10 to 0.40
CAO (Mg/100 gm)	10 to 35	45 to 80
SO^2 (ppm)	2.25	5.25
Viscosity CP	20.30	20.30
Conductivity $\times 10^6$	3 to 15	50 to 200
Turbidity %	10 to 30	40 to 70
Filterability (FK)	0.3 to 2.5	50 to 400
Shape of crystals	Monoclinic	Flattened or cuboid
Moisture	0.04 to 0.15	00.15 to 0.50
Water insoluble % by wt.	—	—
Colour OD 400-OD 500	0.02 to 0.05	0.04 to 0.015

It is seen from this report that the difference between plantation white sugar produced by the vacuum pan process and khandsari sugar produced by the open pan process in their composition is marked only as regards CAO, filterability, and condnctivity and that the other items are more or less the same. In the aforesaid counter-affidavit of Shri Ram Sharan it is stated that "khandsari produced by sulphur units and khandsari produced by non-sulphur units is similar in process, raw-materials and sucros contents. There may be slight difference in colour and crystalline nature of the substance which is attributable to the better clarification method and better equipment adopted by sulphur units which are all improvements and which create no difference in the nature of the product, i.e. khandsari".

A In the counter-affidavit of Shri Zorawar Singh, Secretary, Krishi Utpadan Mandi Samiti, Moradabad filed in W.P.1359 of 1981 it is admitted that the juice of sugarcane boiled in the open pan by the producers and the khandsari sugar manufactured by them contains more than 90 per cent sucros. In Annexure VIII to the counter-affidavit filed in W.P. 1347-1360 of 1981 it is stated that the improved process of khandsari manufacture as evolved by the Gur and Khandsari Research Scheme of the National Sugar Institute, Kanpur is a simplified form of the single sulphitation process as employed in the vacuum pan factories and that as a result of the improvements it is now possible to get a recovery of 7.5 to 8.0 per cent of sugar on cane of average quality and the first sugar produced is quite comparable to ordinary grade crystal sugar produced by the vacuum pan process. That process which has been set out in that Annexure though briefly is quite elaborate and not far different from the one adopted in the manufacture of plantation white sugar by the vacuum pan process. On an inspection of the samples of khandsari sugar and plantation white sugar produced in the Court during the arguments in these writ petitions it was noticed that both khandsari sugar and plantation white sugar are white in colour and crystalline in form though the plantation white sugar is a little more lustrous than khandsari sugar. But khandsari produced by the agriculturists or sugarcane growers in the indigenous method is powdery in form and yellowish in colour. In these circumstances, I am of the opinion that khandsari sugar produced by the petitioners in their mills with the aid of power in the open pan process by employing large number of employees to whom the Industrial Disputes Act, Minimum Wages Act, Factories Act, Employees Provident Fund Act and similar enactments apply is an industrial product which is very different from khandsari produced by agriculturists of sugarcane growers in the old indigenous method.

According to s. 2(d) of the Sugarcane (Control) Order, 1966 khandsari sugar means sugar produced by the open pan process. According to s. 2(f) of the U.P. Khandsari Sugar Manufacturers Licensing Order, 1967 khandsari means *sugar* containing more than 90 per cent sucros and manufactured by the open pan process. Section 3 of that Order makes it obligatory to obtain a licence for the manufacture of khandsari sugar. Section 3(4) (a) of that Order regulates the khandsari sugar manufacturing industry in the best interests of that industry. As mentioned above, it is admitted that no licence is necessary for the manufacture of khandsari by the agriculturists or producers of sugarcane in the indigenous method without the use of power. It is not disputed that khandsari sugar produced by the petitioners is subject to excise duty under the Sugar (Special

Duty) Act, 1959. Clause (ii) of s. 2(c) of that Act illustrates one of the sugars not subjected to the duty, namely, palmyra sugar, that is to say, sugar manufactured from jaggery obtained by boiling the juice of palmyra palm. The word 'sugar' has been too broadly employed in the Sugar (Special Duty) Act, 1959. But it is significant to note that in the Sugarcane (Control) Order, 1966 and the U.P. Khandsari Sugar Manufacturers Licensing Order, 1967, what is covered is *khandsari sugar*, whereas what has been introduced into s. 2(a) of the Act by the Amendment Act 10 of 1970 is "*khandsari*". Thus it would appear that what is sought to be subjected to the levy of market fee under the Adhiniyam is khandsari produced by the agriculturist or producer of sugarcane in the old indigenous method and not khandsari sugar produced by persons like the petitioners in their modern mills by the open pan process.

Mr. Lal Narain Sinha, appearing for the Parishad and Mr. Thakur appearing for the Market Committees have, in my view, conceded by their submission that khandsari is genus and khandsari sugar is a speci that what the petitioners produce in their mills by the open pan process is "*khandsari sugar*" and not "*khandsari*". Dr. Chitale appearing for the respondents in W. Ps. 1348-60 of 1981 has also done so but in a slightly different way by saying that what the petitioners produce is khandsari, whether it is more or less refined than khandsari as such. Mr. Sinha conceded in the course of his arguments that protection of the agricultural producer was the object when the original idea of the Adhiniyam started and he submitted that the object has now become widened and it is now not a legislation for protecting the interests of only agricultural producers and that it has become a marketing legislation under entry 28 of List II in the Seventh Schedule to the Constitution and industrial products also can be included in the schedule. There is a further implied submission in this argument of Mr. Sinha that khandsari sugar is an industrial product as it undoubtedly is. If the original idea as indicated in the prefatory note and preamble of the Adhiniyam was to protect the interests of agricultural producers in disposing of his products such as paddy, rice, silk, eggs, honey, fish and the like, and the Adhiniyam was enacted with that object in my view, it cannot be converted into a general marketing legislation by the mere inclusion of industrial products, not possible of production by agricultural producers, either in the schedule or in the definition of agricultural produce in s. 2 (a) of the Adhiniyam. Therefore, it is not possible to accept the argument of Mr. Sinha that the Adhiniyam originally intended to protect the interests of agricultural producers has become a marketing legislation under

A entry 28 of List II in the Seventh Schedule by the mere fact of inclusion of one or more industrial products in the definition of agricultural produce in s 2 (a) of the Adhiniyam.

Mr. Thakur submitted that it is not the only purpose of the Adhiniyam to protect the interests of the agricultural producer, B that a number of other objects are sought to be achieved by the Adhiniyam and that if the object of the Adhiniyam was to protect the interests of agricultural producers alone, the levy of market fee would have been confined to first sales of agricultural produce. Mr. Thakur would thus say that the only object of the Adhiniyam is not protection of the interests of the agricultural producer in the C disposal of his products to his best advantage. The question whether the levy of market fee under the Adhiniyam is at a single point or whether it is a multi-point levy was not elaborated by Mr. Thakur. Therefore, it is not possible to draw any inference from his submission based on the point of levy of market fee under the Act though it was pointed out by him that under the scheme of the D Adhiniyam sales by producers to traders and by traders to other traders but not retail sales to consumers are subject to the levy of market fee provided that the produce sold is agricultural produce. Mr. Thakur submitted that the levy under the Adhiniyam is on the khandsari trader and not on khandsari producer. That would be so if the item with reference to which levy is made is one produced by E an agricultural producer to protect whose interests the Adhiniyam has been enacted. Khandsari sugar produced by the petitioners in their mills by the open pan process is not an agricultural produce but an industrial produce. Mr. Thakur is right in his submission that the preamble could be looked into only in the case of ambiguity. The prefatory note and the preamble can be looked into only in the F present case as there is dispute between the parties on the question whether "khandsari sugar" produced by the petitioners, which is not inclued in the schedule or definition of agricultural produce in the Adhiniyam, while "khandsari" is mentioned in the definition of agricultural produce in s. 2(a) thereof can be the subject matter of levy of market fee under the Adhiniyam. It is not possible to accept the submission of Dr Chitale that what the petitioners produce is G an agricultural produce, be it more or less refined than knandsari. What the petitioners produce in their modern mills by the open pan process is khandsari sugar, an industrial produce, and not an agricultural produce which is produced by agriculturists. It is admitted by Dr. Chitale that the petitioners' factories are working under licences and that it is not obligatory on agricultural producers H producing khandsari in the indigenous method to obtain licences for producing the same.

Reference is made at page 3 in the judgment of my learned brother Thakkar, J. in these Writ Petitions, to the judgment of a Division Bench of the Allahabad High Court in Special Appeal No. 175 of 1973 filed against the decision of a Single Judge of that court in W.P. No. 4636 of 1969. It is Annexure II to the counter-affidavit of the Parishad in W.P. 1350 etc. of 1981. The reliefs claimed in that Writ Petition were a writ of certiorari quashing the U.P. Ordinance 8 of 1979 which was replaced by the Amendment Act 10 of 1970 and a writ of mandamus directing the respondents State of Uttar Pradesh and others not to enforce the Ordinance against the petitioners therein. The appellants in that case were commission agents carrying on business in the sale and purchase of gur, shakkar and khandsari in the New Mandi, Muzaffarnagar. The State Government issued a notification dated 8.11.1968 under s. 5 (1) of the Adhiniyam declaring their intention to regulate the sale and purchase of specified agricultural produce in the areas including the New Mandi, Muzaffarnagar. That notification included among other things gur, rab, shakkar and khandsari. After the issue of that notification the Mandi Samiti authorities required the writ petitioners in that case to obtain licences for carrying on their business in gur, rab, shakkar and khandsari. Thereupon, a writ petition, out of which Special Appeal No. 49 of 1969 arose, was filed by one Nanak Chand, challenging the enforcement of the Adhiniyam against him. In that appeal, decided on 11.3.1969 a Division Bench of the High Court held that gur, rab and jaggery are not agricultural produce within the meaning of s. 2(a). It was after that decision that Ordinance No. 8 of 1970 was promulgated including gur, rab, shakkar, khandsari and jaggery in s. 2 (a) of the Adhiniyam. The points raised in the aforesaid Special Appeal No. 175 of 1973 were : (1) The State Legislature was not competent to enlarge the difinition of agricultural produce so as to include gur, rab, shakkar, khandsari and jaggery within the term "agricultural produce"; (2) The State Legislature had no legislative competence to enact the U P. Amendment Act 10 of 1970 as that Act was with reference to subject of industries the control of which lay with the Union Government as declared by Parliament by law to be expedient in the public interest within the meaning of entry 52 of List I to the Seventh Schedule; (3) The provisions of the Amendment Act 10 of 1970 are repugnant to the Industries Development and Regulation Act, 1951; (4) The provisions of the Amendment Act 10 of 1970 are discriminatory as vacuum pan sugar is not included in the definition of agricultural produce in s. 2(a); and (5) The provisions of the Amendment Act 10 of 1970 infringe the fundamental right guaranteed by Art. 19(1) (f) and (g) of the Constitution.

A B C D E F G H

A The High Court held in Special Appeal No. 175 of 1973 relying upon this Court's decision in *Paunakram* v. *State of Punjab*(1) that in view of the extended definition of agricultural produce after the Amendment Act 10 of 1970 an enquiry whether gur, rab, shakkar and khandsari are agricultural produce or not is beyond the purview of the Court and that there is no discrimination as there is essential B difference between gur, rab, shakkar and khandsari under one head and vacuum pan sugar on the other, as the former are manufactured by the open pan process and the latter is manufactured by the vacuum pan process and the vacuum pan process sugar industry is in existence since 1931 and involves big sugar factories whereas industries producing khandsari sugar by open pan process are of C recent origin and those units carry on small scale business. In my view, these may be good reasons for not subjecting khandsari sugar to the levy of market fee and subjecting plantation white sugar to the levy. It is not necessary to refer to the decision of the High Court on the other three points. It is sufficient to say that in my D view that decision relates to the necessity to obtain a licence under the Adhiniyam for dealing in khandsari sugar and certain other commodities introduced into the definition of agricultural produce by the Ordinance which was replaced by the U.P. Amendment Act 10 of 1970 and it had nothing to do with the liability of khandsari sugar manufacturers-sellers to pay market fee under the Adhiniyam.

E In these circumstances, I hold that what the petitioners produce in their modern khandsari mills by the open pan process is khandsari sugar, an industrial product like plantation white sugar and not khandsari which is produced by agricultural producers in the indigenous method and that the levy of market fee on sales of F khandsari sugar under the Adhiniyam is unwarranted as the Adhiniyam is intended for the protection of agricultural producers in the disposal of their products and only khandsari produced by agricultural producers is included in the definition of agricultural produce in s. 2(a) thereof and not khandsari sugar.

On the question of discrimination, Mr. Shanti Bhushan submit- G ted that plantation white sugar produced is by the vacuum pan process, in the same manner as khandsari sugar is produced by the open pan process and that there is no major difference between the two industrial products and there is discrimination in so far as plantation white sugar is not sought to be subjected to the levy of H market fee under the Adhiniyam where only khandsari sugar is

(1) AIR 1975 SC 187.

sought to be subjected to the levy. He submitted that the difference in the process of manufacture alone is not a distinguishing factor and that the difference in the process of manufacture cannot be a ground for holding that there is no discrimination if the levy could be made on khandsari sugar under the Adhiniyam, leaving plantation white sugar out of its purview. He further submitted that plantation white sugar is produced in larger quantity than khandsari sugar and that traders in plantation white sugar also derive advantage by the use of the market area in the whole of the State of Uttar Pradesh which has been divided into 250 market areas and no part of that State is left uncovered by the Adhiniyam. In this connection, Mr. Shanti Bhushan invited the attention of this Court to the decision in *Laksmi Khandsari etc. etc.* v. *State of U.P. ana Ors.*(1) where it is observed at page 94 that the restriction may be partial, complete, permanent or temporary but this must bear a close nexus with the object sought to be achieved. As stated earlier, Mr. Sinha submitted that the two products must be identical for attracting the bar of Art. 14 of the Constitution and that similarity alone will not do. But it must be remembered that the Adhiniyam is concerned with the levy of market fee on a variety of products, namely, agricultural produce and that if khandsari sugar produced by the petitioners in their mills by the open pan process out of sugarcane juice could be brought under the purview of the Adhiniyam it is difficult to understand how plantation white sugar for the production of which also sugarcane is the raw material could be exempted from the levy. The levy of market fee could not be said to depend upon the exact chemical composition of the commodity. Mr. Thakur submitted that plantation white sugar produced by the vacuum pan process does not require regulation and, therefore, there is no discrimination in not subjecting it to the levy under Adhiniyam. Similarly, Dr. Chitale submitted that whatever was considered necessary to be regulated was brought under the Adhiniyam and that there is no discrimination. It is not possible to accept this submission of Mr. Thakur and Dr. Chitale. Plantation white sugar does not require less regulation than khandsari sugar. Reference was made to this Court's decision in *Andhra Sugars Ltd. and Anr. etc.* v. *State of Andhra Pradesh and Ors.*(2) where it has been heid that factories producing plantation white sugar by the vacuum pan

(1) [1981] 3 SCR 92 at 94.
(2) [1968] 1 SCR. 705.

process and khandsari units producing sugar by the open pan process are distinct and separate units. That case related to imposition of tax on sugar and exemption of khandsari and jaggery from the levy. The principle underlying the levy of tax cannot be made applicable to the levy of market fee under the Adhiniyam. Both plantation white sugar and khandsari sugar are industrial products and there is clear discrimination, in my view, against khandsari sugar in seeking to subject it to the levy under the Adhiniyam leaving out plantation white sugar.

For the reasons mentioned above I am of the opinion that the Writ Petitions deserve to succeed. They are accordingly allowed but without any order as to costs.

THAKKAR, J. The petitioners in the Present group of fourteen Writ Petitions under Art. 32 of the Constitution of India, are owners of Khandsari factories in Uttar Pradesh. They seek appropriate relief on the premise that what they produce is 'Khandsari Sugar' and not 'Khandsari' which is covered by the definition of 'Agricultural Produce' in section 2(a) of U.P. Krishi Utpadan Mandi Adhiniyam Act, 1964 (hereinafter referred to as the 'Act') which reads as under :

> "agricultural produce" means such items of produce of agriculture, horticulture, viticulture, apiculture, sericulture, pisciculture; animal husbandry or forest as are specified in the Schedule, and includes admixture of two or more of such items, and also includes any such item in processed form, and further includes gur, rab, shakkar, khandsari and jaggery;

Accordingly they contend that they are not liable to obtain a licence under Rule 67 of the Rules framed in exercise of powers under section 40 of the Act or to pay the licence fees (Rs. 100 per annum) payable for such licence. So also they contend that the Market Committee (Mandi Samiti) constituted under section 12 of the Act cannot levy and collect market fee of 1% of the value, under section 17 (iii) of the Act, on the transactions in respect of what they produce, from the traders who purchase the product from them.

Resistence to the regulation of the trade in 'Khandsari' and the collection of market fees thereon dates back to 1969. It was on November 5, 1969 that an Ordinance, U.P. Krishi Utpadan Mandi

Adhiniyam, 1964 (Amendment and validation Ordinance No. 1969) was passed, whereunder, the definition of 'agricultural produce' embodied in section 2(a) of the Act was amended by including 'gur, rab, shakkar, khandsari and jaggery'. The said Ordinance was subsequently converted into U.P. Krishi Utpadan Mandi (Amendment and Validation) Act of 1970. Thus, 'Khandsari' stood covered by the definition of section 2(a) of the Act so amended. And this provided the starting point of resistance in the form of a Writ Petition on the part of a few Commission Agents carrying on the business of sale and purchase of Khandsari. They instituted a Writ Petition, being Misc. Writ Petition No. 4835 of 1969 in the High Court of Allahabad, challenging the validity of the inclusion of 'Khandsari' in the definition of 'agricultural produce' contained in section 2(a). The challenge was made on several grounds but no distinction was sought to be made between Khandsari produced indigenously on the one hand and Khandsari produced in the factories like the petitioners' factories on the other hand, by calling the latter as 'Khandsari Sugar'. A learned single Judge, by his judgment and order dated February 18, 1972, repelled the challenge and dismissed the Writ Petition. A Division Bench of the Allahabad High Court confirmed the decision in Special Appeal No. 175 of 1973 on September 7, 1977.

The matter appears to have rested there till 1981. Market fees were being collected in respect of 'Khandsari' produced by the factories like the Petitioners' factories under the Act ever since 1969-70. So also the factory owners were obtaining the requisite licence under the Act since 1969-70. Eleven years later, some of the factory owners, petitioners herein, have woken up to the problem and have renewed the challenge by way of the present petitions. The definition embodied in section 2(a) of the Act is an inclusive one. It in terms provides that 'Khandsari' is included within the coverage of "agricultural produce". The Act however does not define the term 'Khandsari'. The owners of the 'Khandsari factories', petitioners herein, therefore contend that what they produce is "Khandsari Sugar" and not 'Khandsari'. But then it is not sufficient for the petitioners to describe their product as "Khandsari Sugar" in order to successfully contend that it is not 'Khandsari'. It is further more necessary for them to show that what they produce is popularly or commercially known as "Khandsari Sugar" and *not* as 'Khandsari'. And this they have failed to establish. It is not shown that "Khandsari Sugar" is the nomenclature employed in the

world of trade and commerce in respect of their product. Neither the traders, nor the consumers are shown to have done so in their day-to-day dealings.

It appears that the term "Khandsari Sugar" owes its origin to U.P. KHANDSARI SUGAR MANUFACTURING ORDER of 1977 issued under section 3 of the ESSENTIAL COMMODITIES ACT, 1955. But then "Khansari Sugar" was defined by clause 2(f) of the said order as meaning "sugar containing more than 90% sucrose and manufactured by open pan process including bels." It is a statutory definition enacted for the 'purpose' of the aforesaid Control Order issued under section 3 of the Essential Commodities Act which Control Order uses the expression 'Khandsari Sugar'. It has nothing to do with the meaning and content of the term 'Khandsari' as used by the trade in U.P. Since the term 'Khandsari' has not been defined by the Act, it must be construed in its popular sense. That is to say in the sense in which people conversant with the subject-matter with which the statute is dealing, would attribute to it. This principle of construction has been affirmed and reaffirmed by this Court in *Commissioner of Income-tax, Andhra Pradesh* v. *Taj Mahal Hotel*[1] and *Porrits & Spencer (Asia) Ltd.* v. *State of Haryana*[2] as also in numerous other decisions. It is unnecessary for the present purpose to cite all the decisions. Or to undertake a journey through the factual hinterland of each decision. Or to turn the headlights on the observations made in each of the decisions. For, the principle, though garbed in different apparel, is simply this. In legislations pertaining to the world of business and commerce, the dictionary to refer to is the dictionary of the inhabitants of that world. What they understand by the term 'Khandsari' is precisely what that term means in the statute designed to regulate their dealings and transactions. The best test, therefore, is to ask the question what they themselves have understood by the term 'Khandsari', how they themselves have interpreted it, and on what basis they themselves have moulded their own conduct, for all these years. The factory owners similarly situated as petitioners as also the traders in general have understood the term 'Khandsari' as being applicable to the Khandsari produced by the factories by open pan process as also to Khandsari produced indigenously. They have been obtaining licence under the Act and paying market

(1) [1971] 82 I.T.R. 44 at p. 47.
(2) [1979] 1 S.C.R. 545.

fee at 1% of the value since 1969-70 till 1981 without demur. Even A
though the coverage of 'Khandsari' by virtue of the definition of section 2(a) as amended in 1969-70 was challenged in 1969 it was not on this ground. As mentioned earlier, the challenge initiated in 1969 ended in 1979 with the decision of the Division Bench of the Allahabad High Court rendered in Special Appeal No. 175 of 1973. A copy of this judgment has been placed on record of the present group of petitions at Annexure II. It is not necessary to advert to B
the judgment in detail for the purposes of the discussion of the present point. Suffice it to say that the challenge was made on five grounds indicated in the judgment and that none of these grounds pertained to the aspect relating to the meaning and content of the term 'Khandsari'. Thus, for more than ten years even the petitioners have not felt that 'Khandsari' means something other C
than what they produce. The petitioners have not established that their produce is marketed under a different name in the market. There is no material for holding that the petitioners sell their product under the name "Khandsari Sugar" to the traders. Or that the traders *inter se* in transacting their business refer to the same as Khandsari Sugar. Or that any consumer D
desirous of purchasing factory produced Khandsari would ask for "Khandsari Sugar". It is not shown that either the petitioners or the traders or the consumers refer to the product as "Khandsari Sugar". Nor is it shown that it is not marketed under the name 'Khandsari'. In other words, it is not shown that in the popular or E
commercial sense, the product is not known as 'Khandsari', but is known as Khandsari Sugar. In this context one significant fact needs to be stressed, namely, that the term "Khandsari Sugar" saw the light of day seven years after the Act was enacted in 1970 when U.P. Khandsari Sugar Order of 1977 was born and the artificial nomenclature was coined for the restricted purpose of the Order. F
There is no material even to show that this nomenclature was known to the petitioners or to the traders themselves theretobefore. The contention that the article produced by the petitioners is not Khandsari must, therefore, be firmly and unhesitatingly negatived.

The legislature, it is also argued, 'could not have intended' to G
cover the produce turned out by producers like the petitioners. The principal object of the Act is to protect the producers from exploitation. Those who own or run Khandsari units, like the petitioners, engaged in large scale production with the aid of relatively modern plant and machinery worth lacs of rupees, and employ a large number of workers, need no such protection. Such is the H

A argument. In our opinion the argument is untenable. The legislature has in terms encompassed 'Khandsari' within the definition of section 2(a) of the Act. And the term 'Khandsari' is sufficiently wide to cover all varieties of Khandsari including the article produced by the factories like those of the petitioners. Besides, the basic premise assumed by the petitioners that the object of the Act is
B merely to protect the producers from exploitation is fallacious. Of course, one of the main objects of the Act is to protect the producers from being cheated by unscrupulous traders in the matter of price, weight, payment, unlawful market charges etc. and to render them immune from exploitation as indicated by the 'prefa-
C tory note' and by the provisions contained in sections 16(i), (ii), (iii), (iv), (viii) etc. While this is one of the objects of the Act, it is not the sole or only object of the Act. The Act has many more objects and a much wider perspective such as development of new market areas, efficient collection of data, and processing of arrivals in Mandis with a view to enable the World Bank to give substantial economic assistance to establish various markets in Uttar Pradesh,
D as also protection of consumers and even traders from being exploited in the matter of quality, weight and price This needs no elaboration in view of the pronouncements of this Court. For instance in *Ramesh Chandra* v. *State of U.P.*[1] this Court has observed thus :—

> "The long title of the Act indicates that it is an Act
E "to provide for the regulation of sale and purchase of agricultural produce and for the establishment, superintendance, and control of markets therefor in Uttar Pradesh." From the Objects and Reasons of the enactment it would appear that this Act *was passed for the development of new market areas and for efficient data collection and processing*
F *of arrivals in the Mandis to enable the World Bank to give a substantial help for the establishment of various markets in the state of Uttar Pradesh.* In other States the Act is mainly meant to protect an agriculturist producer from being exploited when he comes to the Mandis for selling his agricultural produce. As pointed out by the High
G Court certain other transactions also have been roped in the levy of the fee, in which both sides are traders and neither side is an agriculturist. This has been done for the effec-

H (1) [1980] 3 S.C.R. 104

tive implementation of the scheme of establishment of markets mainly for the benefit of the producers."

(Emphasis added)

And in *Ramesh Chandra Kachardas Porwal & Ors.* v. *State of Maharashtra & Ors. etc.*[1] it has been stated that :—

"It is true that one of the principal objects sought to be achieved by the Act is the securing of a fair price to the agriculturist for his produce, by the elimination of middlemen and other detracting factors. *But, it would be wholly incorrect to say that the only object of the Act is to secure a fair price to the agriculturist.* As the long title of the Act itself says, the Act is intended to regulate the marketing of agricultural and certain other produce. The marketing of agricultural produce is not confined to the first transaction of sale by the producer to the trader but must necessarily include all subsequent transactions in the course of the movement of the commodity into the ultimate hands of the consumer, so long, of course, as the commodity retains its original character as agricultural produce. While middlemen are sought to be eliminated, it is wrong to view the Act as one aimed at legitimate and genuine traders. Far from it. The regulation and control order is as much for their benefit as it is for the benefit of the producer and the ultimate consumer. The elimination of middlemen is as much in the interest of the trader as it is in the interest of the producer. Promotion of grading and standardisation of agricultural produce is as much to his benefit as to the benefit of the producer or consumer. So also proper weighment. The provision for settlement of disputes arising out of transactions connected with the marketing of agricultural produce and ancillary matters is also for the benefit of the trader. *It is because of these and various other services performed by the Market Committee for the benefit of the trader that the trader is required to pay a fee.* It is, therefore, clear that the regulation of marketing contemplated by the Act involves benefits too traders to in a large way. It is also clear to our mind that the regulation of marketing of agricultural produce, if confined to the sales by producers within the market area to traders, will very soon lead to its circum-

(1) [1981] 2 S.C.R. 866

vention in the guise of sales by traders to traders or import of agricultural produce from outside the market area to within the market area."

In the face of these pronouncements it cannot be successfully urged that the object of the Act is merely to protect the producer from exploitation. As pointed out in the aforesaid decisions, while the analogous Acts in other States had a limited perspective, so far as Uttar Pradesh is concerned, the Act has a much wider horizon, and even transactions where both the sides are traders and neither side is an agriculturist, are brought within the coverage of the Act. There is, therefore, no merit in this nuance of the challenge.

The petitioners have next contended that having regard to the definition of 'Producer' contained in section 2(p) of the Act, this Act could not have been intended to cover the article produced by them. We do not see anything in the definition which would justify overriding the clear language of the statute read in the light of the perspective of the Act and the history of the levy. While the term 'Khandsari' has not been defined it is obviously wide enough to cover Khandsari produced by any process regardless of its quality or variety. As discussed earlier, one of the objects of the Act *inter alia* is to protect the consumer as also the trader. We need not reiterate the reasoning articulated by us a moment ago in dealing with the first facet of this argument. The argument based on the supposed intendment of the Act, in our opinion, is wholly misconceived. We have, therefore, no hesitation in repelling this contention.

Lastly section 2(a) of the Act has been challenged on the ground that it is discriminatory and violative of Art. 14. They have contended that section 2(a) of the Act, in so far as it includes Khandsari in the definition of agricultural produce and thereby subjects the trade in the said product to regulation under the relevant provision of the Act is ultra vires Art. 14 of the Constitution of India inasmuch as it introduces a hostile discrimination. According to the petitioners, the article produced by them, which they call Khandsari sugar, is almost indistinguishable from the plantation sugar mills. Whether the article produced by the petitioners is very much similar to plantation sugar or not is a moot question. The other side has controverted this averment. The process of manufacture is different. The market price of Khandsari is lower depending on the quality.

The most inferior variety would be more like the Khandsari produced by the indigenous process (yellowish in colour and powdery in form) and would fetch a lesser price in the market. It would appear from the affidavit that the most superior variety might perhaps be approximate in appearance to the plantation sugar manufactured by the sugar mills but would all the same fetch a somewhat lesser price than the price fetched by plantation sugar. It is a different commercial product known by a different name in the trade. Be that as it may, the argument that unless both are regulated under the Act. Art. 14 would be offended, is meritless. This Court has had several occasions to deal with a similar problem in the context of taxing statutes And this Court has consistently taken the view that in the matter of classification the Legislature has a wide discretion in selecting the persons or objects it will tax, and that a statute is not open to attack on the ground that it taxes some persons or objects and not others. 'Everything-or-nothing' argument is basically fallacious. For, the Legislature may tax or regulate the trade in some objects and not in others. Or may bring within its net some objects initially and may cast the net wider later on. Or may tax or regulate the trade in only such objects which it considers expedient or worthwhile. The decision, essentially a policy decision, may depend on several factors. Factors, such as, the felt necessity for such an impost or regulation of a trade in a particular article, likely impact of the decision on the trade, industry, or consumer, viability of the same from the stand point of its own management resources Or from the angle of the net advantage to be secured in the balance sheet of pros and cons taking into account the anticipated administrative and management inputs required to be invested in the exercise. In substance, it is a policy decision turning on numerous and complex factors. In *East India Tobacco Co.* v. *State of Andhra Pradesh*[1] this Court has quoted with approval the following passage from Willis on Constitutional Law[2] :

> "A State does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonable .... The Supreme

(1) [1963] 1 S.C.R- 404

(2) Willis on Constitutianal Law p. 857

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> Court has been practical and has permitted a very wide latitude in classification for taxation."

And this Court has turned down the plea that in order to respect Art 14, both varieties of tobacco (virginia tobacco on B the one hand and country tobacco on the other) must be taxed or none. says the Court :

> "if a State can validly pick and choose one commodity for taxation and that is not open to attack under Article 14, the same result must follow when C the State picks up one category of goods and subjects it to taxation."

In the matter of market regulation also Khandsari and Mill sugar are governed by different regulations. As a matter of fact mill sugar is subject to control and regulation of no mean D order under Sugar (Control) Order of 1966 whereunder the sugar mills are obliged to make available a significant quantity of sugar by way of levy at stipulated prices which are very much lower than prevailing open market prices. 'Khandsari' produced by the petitioners was not subject to similar control, for all these years. The producers of Khandsari like petitioners, it is obvious, have E benefited thereby. It is true that for a short period Khandsari was also subjected to levy under Khandsari Sugar (Levy) Order of 1981 on a relatively small portion of its production. That however makes little difference from the standpoint of challenge to section 2(a) of the Act on the ground that Mill sugar is not F included in the definition of 'agricultural produce' and not subjected to the provisions of the Act. So also the mere fact that both are sweetening agents will not justify condemnation of the classification which is based on a totality of the factors of differentiation There is therefore no substance in the challenge from the standpoint of Art. 14 of the Constitution of India. It is not for this Court to question why Khandsari produced by the G petitioners is included when sugar produced by the Mills is not so included. It is not a question to which we can legitimately address ourselves, for, essentially it is a question of legislative wisdom and legislative policy dictated by countless and complex considerations. The Court cannot, and will not, substitute its own wisdom in place of the legislative wisdom in such matters. The H

Court will not impose on itself this responsibility, if not for any other reason, than for the reason that it is beyond its province. The arguments advanced on this wavelength need not, therefore, detain usny a longer. A

The petitions, accordingly, fail. Rule issued in each of the petitions will stand discharged There will be no order regarding costs. Interim orders will stand vacated. B

In view of the majority decision, all the writ petitions are dismissed. There will be no order regarding costs. Interim orders will stand vacated.

A.P.J. *Petitions dismisesd*