

SH. MALAPRABHA CO-OP., SUGAR FACTORY LTD.

A

v.

UNION OF INDIA AND ANR.

JANUARY 28, 1997

[S.C. AGRAWAL, B.P. JEEVAN REDDY AND
G.T. NANAVATI, JJ.]

B

Essential Commodities Act, 1955/Sugarcane (Control) Order, 1966 :

S.3(3-C)/Clause 5A—Directions issued by Supreme Court to the Government of India to take into account the liability of the manufacturer as regards cane price and refix the price of levy sugar—Doubt or confusion raised in the Review Petition is the result of unwillingness of the Government to give up its views and accept and implement the said decision—Order passed in respect of levy sugar price for the year 1982-83 could not have any bearing on the fixation of price of levy sugar for the years 1975-76 to 1979-80—Matter not covered by the decision in Malaprabha.

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D

Shri Malaprabha Co-operative Sugar Factory Ltd. v. Union of India & Anr., [1994] 1 SCC 648, referred to.

CIVIL APPELLATE JURISDICTION : I.A. No. 5-6 of 1995.

E

In

Civil Appeal Nos. 122-123 of 1981.

From the Judgment and Order dated 3.10.80 of the Karnataka High Court in W.A. Nos. 427 and 440 of 1980.

F

F.S. Nariman, N.N. Goswami, P.H. Parekh, Ms. Sunita Sharma, Subhash Sharma, D.M. Popat, C.V. Subba Rao, T.C. Sharma, D.S. Mehra, Ranjit Kumar, Praveen Kumar, Rajiv Dutta, Indeevar Goodwill, S.K. Dingra, C.S. Srinivasa Rao, G. Narasimhulu, Aruneshwar Gupta, K.P. Gupta, A.K. Goel, G.I. Gopalkrishnan, M. Qamaruddin, Pradeep Misra, S. Ravindra Bhat, Ravindra Bana, Pramod Dayal, Ms. Geetanajali Mohan and K.L. Mehta for the appearing parties.

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The following Order of the Court was delivered :

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A A batch of civil appeals (including the above mentioned two appeals), special leave petitions, writ petitions, transfer petitions and transferred cases challenging the fixation of price of levy sugar for the years 1974-75 to 1979-80, by orders issued under Section 3(3-C) of the Essential Commodities Act, 1955, was disposed of by this Court by a common judgment dated 22.9.93. This Court held that the impugned orders/notifications were bad as the price was not fixed in accordance with the relevant provisions of law. However, it did not quash the notifications as they would have led to nebulous situation during the interregnum till re-fixation of price. Instead of quashing the said notifications it directed the Union of India to amend the notifications taking into account the liability of producers of sugar under clause 5A of the Sugarcane (Control) Order, 1966 (hereinafter referred to as the '1966 Order'), having regard to the factors mentioned in Section 3(3-C) of the Act. The Government was also directed to issue the amended notifications by December 31, 1993.

D The union of India was not satisfied with the judgment and, therefore, filed Review Petition Nos. 211 and 212 of 1994 on 15.11.93. They were dismissed on 23.2.94. The Union of India had also filed an application on 24.12.93 for directions/clarifications and extension of time. The clarification was sought for on the following ground:

E "It is submitted that the decision of this Hon'ble Court lends itself to two different interpretations as mentioned below :

F (a) The amount of additional cane price payable by sugar factories at the end of each season is to be added to the SMP of Sugarcane while computing the element of cost as per Factor 'A' of Section 3(3-C) of the Essential Commodities Act, 1955 for purposes of price fixation;

G (b) The levy sugar prices may be refixed taking into account only Factors 'A' to 'D' of Section 3(3-C) of the Essential Commodities Act, 1955."

It wanted this Court to clarify :

H ".....whether the revised levy sugar price should be the sum total of Factors 'A', 'B', 'C' and 'D' of Section 3(3-C) of the EC Act in case of price fixation."

The application was dismissed with costs but the time for implementation of the judgment was extended upto November 30, 1994 peremptorily. In spite of this direction the Government did not issue the required notifications within time. It issued the following six notifications on 22.2.95 :

1. No. GSR 76(E)/Ess. Com./Sugar dt. 22.2.1995 - 1974-75.
2. No. GSR 77(E)/Ess. Com./Sugar dt. 22.2.1995 - 1975-76.
3. No. GSR 78(E)/Ess. Com./Sugar dt. 22.2.1995 - 1976-77.
4. No. GSR 79(E)/Ess. Com./Sugar dt. 22.2.1995 - 1977-78.
5. No. GSR 80(E)/Ess. Com./Sugar dt. 22.2.1995 - 1978-79.
6. No. GSR 81(E)/Ess. Com./Sugar dt. 22.2.1995 - 1979-80.

It is the grievance of the applicants that the said notifications have been issued in disregard and contravention of the judgment of this Court inasmuch as the Government, while re-fixing the levy sugar price for the said six years, has failed to include in such re-fixation the element of additional cane price payable by the producers under clause 5A of the 1966 Order. They, therefore, want this Court to give appropriate directions to the Union of India to forthwith comply fully and effectively with the judgment by issuing supplemental notifications providing for additional levy sugar price. applicant No. 1 in both these applications is the Indian Sugar Mills Association and it has filed the applications on behalf of all its members. Applicant Nos. 3 to 33 are some of its members and were parties to the above referred batch of cases. Though the Government, while issuing the said six notifications, did not take into consideration the additional cane price payable by the producers of sugar under clause 5A yet the stand taken by them is that the said notifications are consistent with the judgment of this Court. The contentions raised in this behalf by them are the same as were taken earlier while the said batch of matters, the review applications and the applications for clarification were heard. In order to appreciate whether there is any substance in the contentions raised by the respondents it is necessary to recall the rival submissions made earlier and how they were dealt with by this Court.

The challenge to the fixation of price of levy sugar was two- fold. It

A was challenged on the ground that it was not determined in accordance with Section 3(3-C) of the Act inasmuch as the price was fixed without regard to the four Factors specified therein. The submission in that behalf was that while fixing the price under Section 3(3-C) regard must be had to the producer's liability under clause 5A of the 1966 Order which provides for payment of additional minimum price to be paid by the producer of sugar to the Sugarcane grower and, therefore, what is statutorily payable to the grower has necessarily to be included as an element of Factor 'A' of Section 3(3-C). Moreover, the minimum price payable under Section 3(3-C) and the additional minimum price payable under clause 5A are integral components of manufacturing cost under Factor 'B'. The second ground of challenge was that mopping up of the entire excess realisation by sale of free sugar was also incorrect in view of clause 5A as that would result in total denial of any return on the capital employed in the business of manufacturing sugar, resulting in not even recovering the actual cost of production. Though prior to October 1, 1974 the date on which clause 5A was added, 100% mopping up, that is taking the entire realisation by sale of free sugar into consideration for fixing price of levy sugar was permissible, after that date only 50% could be considered for that purpose.

On the other hand, it was contended that the objectives of Section 3(3-C) and clause 5A are different. Whereas Section 3(3-C) deals with fixing of price of levy sugar, clause 5A deals only with the amount payable to the cane grower. Thus, clause 5A cannot have any relevance for determination of price of levy sugar. It was submitted that price of levy sugar has to be fixed in advance whereas determination of the share of cane grower under Clause 5A comes into operation only after the sugar year is over. The liability of payment of additional cane price under clause 5A would arise only in case of surplus from sales of both levy and free sugar after adjustment of the unit cost production. This surplus may or may not arise. Therefore, it cannot be regarded as a statutory or mandatory payment. As regards mopping up of the extra realisation by sale of free sugar, the contention raised by the Government was that even after introduction of clause 5A, it being an independent provision, it was open to the Government to mop up the entire extra realisation, even though clause 5A entitles the producer to retain 50% of the extra realisation as his share to meet with his other financial obligations and liabilities.

H This Court rejected the contention that Section 3(3-C) and clause 5A

are totally independent and held that "if the determination of minimum price of sugar and fixation of the price of levy sugar under quantity of sugar to be supplied by the producer are inter-connected, then they must be read as a whole and not separately as though each is distinct". With respect to mopping up of extra realisation on sale of free sugar for the purpose of determining price of levy sugar this Court held that according to the new pricing policy contained in clause 5A the producer became entitled to 50% of such excess realisation from October 1, 1974 and, therefore, it was not open to the Government to mop up his share also while fixing the price of levy sugar. We need not refer to this aspect of mopping up further because that is really not relevant for deciding these applications. We may only state that under Factor 'D' of Section 3(3-C) extra realisation on sale of levy free sugar is a relevant consideration and, therefore, the Government can take it into account to enable it to fix levy price at a lower level. As explained by this Court in that judgment the effect of mopping up is to depress or reduce the levy sugar price.

This Court construed clause 5A as introducing a new pricing policy which conferred a benefit on the producer by providing that he shall be entitled to retain 50% of the extra realisation from sale of levy free sugar. At the same time, it created a new liability for him by providing that he shall share the extra realisation from sale of levy free sugar with the cane grower on 50:50 basis. In view of this new liability this Court held that the Government was bound to take that also into account while fixing the price of levy sugar, without specifying as to whether that liability became a component of Factor 'A' or Factor 'B' or both those Factors of Section 3(3-C).

As regards the direction to take into account the liability of the producer of sugar under clause 5A what is now submitted on behalf of the respondents is as under :

"..... it is submitted that this part of the directions was complied with by not mopping up the extra realisations on account of sales of free-sale sugar. While determining the originally notified prices, the extra realisations were mopped up for purposes of determination of the prices. This had resulted in a reduction in the prices to a level lower than the price to which the sugar producers would have been entitled to in terms of the provisions

A of the aforesaid Section 3(3-C)."

B The respondents have also tried to support their action by contend-
ing that clause 5A is 'inter-connected with clause 3 of the 1966 Order and
section 3(3-C) is an independent provision. Therefore, the direction given
by this Court cannot be interpreted to mean that the additional cane price
fixed in terms of clause 5A should also be taken into account as a cost
element in addition to those specified in Section 3(3-C). It is also submitted
that it is also not feasible to include the additional cane price payable under
clause 5A in the minimum cane price payable under Section 3(3-C) as the
two exercises are required to be done at two different stages and the
C additional cane price is payable only in case of surplus. It was lastly
contended that a three-Judge Bench of this Court has upheld on 20.2.96
the levy prices fixed for 1982-83 in T.C. No. 9 of 1990 and that would mean
that this Court has now accepted the contention of the Government that it
is not required to include the additional cane price payable under clause
D 5A while determining the price of levy sugar under Section 3(3-C).

All these contentions except the last one were raised by the respon-
dents earlier while the above batch of matters, the review applications and
the applications for clarification were heard by this Court. All those
contentions have been rejected and, therefore, it is really not open to the
E respondents to raise them again. It appears to us that the respondents, like
an ordinary litigant, are trying to find excuses for not complying with the
judgment of this Court merely because it is not palatable to them. The
direction given by this Court in Paragraph 109 of the judgment is quite
clear and does not lend itself to two interpretations or any confusion as
F contended by the respondents. In unambiguous terms this Court has
directed the Government of India to take into account the liability of the
manufacturer under clause 5A of the 1966 Order as regards cane price and
re-fix the price of levy sugar. Obviously, the price of levy sugar has to be
fixed having regard to the Factors mentioned in Section 3(3-C) of the Act
and, therefore, this Court while giving the aforesaid direction also directed
G them to re-fix the price of levy sugar having regard to those Factors also.
The doubt or confusion, if any, appears to us to be the result of unwilling-
ness of the Government to give up its views and accept and implement the
decision of this Court.

H The observation, in Paragraph 104 of the judgment that the amount

which the producer of sugar is entitled to retain cannot be taken into consideration for determination of price of levy sugar, was made in the context of mopping up of the extra realisation. The issue was whether the entire extra realisation or only 50% thereof could be mopped up, in view of the new pricing policy contained in clause 5A, for depressing the levy price. Since by the new pricing policy a benefit was sought to be conferred on the producer of sugar by making him entitled to retain 50% of the Extra realisation this Court held that the said amount cannot be taken into consideration for determination of price of levy sugar. That was entirely a different aspect. The observation which is made in Paragraph 109 and the direction given therein is with respect to the aspect of sugar producer's liability to pay additional Sugarcane price. Clause 5A being inter-connected with Section 3(3-C), this new liability would certainly get projected into Factors 'A' and 'B' of Section 3(3-C). As earlier pointed out mopping up of extra realisation is an element of Factor 'D' of Section 3(3-C). Thus the contentions raised on behalf of the respondents even otherwise also do not deserve to be accepted.

The order that was passed by this Court on 20.2.96 in Transferred Case (Civil) No. 9 of 1990 was in respect of levy sugar price for the year 1982-83 and, therefore, it cannot have any bearing on the fixation of price of levy sugar for the years 1975-76 to 1979-80. Moreover, this Court, while passing the said order, has clearly stated that "....this matter is not covered by the decision of this Court in *Shri Malprabha Co-operative Sugar Factory Ltd. v. Union of India and Anr.*, [1994] 1 SCC 648". Even if the Government has omitted to take into consideration one unfavourable element, namely, mopping up of excess realisation it cannot justify its omission to take into consideration another relevant element which is favourable to the producer of sugar.

We, therefore, allow these applications and direct the Government to issue additional orders/notifications in terms of the directions given by this Court in the above referred batch of cases.

G.N.

Applications allowed.