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W.A.No.1850 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 25.09.2023

DELIVERED ON: 19.10.2023

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HON'BLE MR.JUSTICE P.B.BALAJI

W.A.No.1850 of 2019

and CMP.Nos.12510, 12512 and 12513 of 2019

The South Indian Sugar Mills

Association - Tamil Nadu,

Rep. by its Secretary, "Karumuthu Centre",

2nd Floor, 634, Anna Salai,

Chennai-600 035.

.. Appellant

Vs.

1.The Union of India,

Rep by the Secretary / Deputy Secretary to Government,

Ministry of Consumer Affairs, Food and Public Distribution,

Krishi Bhavan, New Delhi-110 114.

2.The Director of Sugar and

Cane Commissioner of Tamil Nadu,

690, Anna Salai, Nandanam, Chennai-600 035.

3.Tamil Nadu Karumbu Vivasayigal Sangam

(Regn. No.19/88), Rep by its Vice President,

Mr.D.Ravindran, S/o. P.Dharmalingam,

46-A, VOC Street, West Tambaram,

Chennai-600 045.

.. Respondents



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Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the Common Order dated 13.02.2019 in W.P.No.7872 of 2015.

For Appellant : Mr.P.S.Raman, Senior Counsel
for Mr.Prahalad Bhat

For Respondents : Mr.AR.L.Sundaresan,
Additional Solicitor General
for Mr.J.Madanagopal Rao for R1

Mr.Haja Nazirudeen,
Additional Advocate General
assisted by
Mrs.R.L.Karthika,
Government Advocate for R2

Mr.S.Udayakumar for R3

JUDGMENT

D.KRISHNAKUMAR, J.

The writ petitioner is the appellant herein and aggrieved by the dismissal of the writ petition holding that the omitted Clause 5A of the Sugarcane Control Order, 1966 can be invoked against the members of the Appellant Association, has filed the instant writ appeal.

2. Facts leading to the filing of the writ appeal, briefly narrated, are as follows:



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2.1. Sugarcane is declared as an essential commodity by the Government of India under the Essential Commodities Act, 1955 [in short "EC Act"]. In exercise of powers conferred on it under Section 3 of EC Act, the first respondent issued Sugarcane (Control) Order, 1966 in connection with production, regulation and transportation of sugarcane. The object of the Act and the Control Order issued thereunder is to ensure that there is an adequate supply of sugarcane during every sugar season for production of sugar, having regard to the demand for sugar for domestic consumption.

2.2. The Scheme of the Order prior to the year 2009 was that the Central Government determined a minimum price called the Statutory Minimum Price (SMP) under Clause 3 of the Order. This price is fixed based on detailed study and recommendations made by the Commission for Agricultural Cost and Price (CACP) considering the relevant factors mentioned in Clause 3. Clause 5-A price had to be calculated as per the formula provided in the Second Schedule to the Order. The Schedule provided for the determination of an 'L' Factor, which was usually



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determined by the first respondent as soon as possible after the end of sugar year (October to September), considering the cost schedule and return recommended by the specified authority. The first respondent lastly fixed 'L' factor for the year 2003-04 on 06.09.2005, but however had not determined 'L' Factor for the sugar years 2004 to 2005 to 2008-2009.

2.3. According to the appellant, due to delay in declaring the additional price under Clause-5A, the members of the petitioner / appellant Association had on their own volition paid amounts in excess of Statutory Minimum Price as advance towards Clause 5A price, as and when the same gets determined to support the farmers in the growing of sugarcane.

2.4. In the year 2009, by way of Sugarcane (Control) Amendment Order, 2009, the Central Government substituted "Fair and Remunerative Price" (FRP) in the place of Statutory Minimum Price (SMP) which includes consideration of additional factors in fixing the cane price i.e.,



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reasonable returns to the farmers. As a result, Clause 5A of the Order and the Second Schedule to the Control Order stood omitted with effect from 22.10.2009. There was no Savings Clause in the Sugarcane (Amendment) Order, 2009.

2.5. As the first respondent had not determined the 'L' Factor for the sugar seasons 2004-2009, certain sugarcane grower associations approached this Court by filing writ petitions in W.P.Nos.7979/2013, 33387/2013, 531/2015, 532/2015, 2369/2015 and 3581/2015. Pursuant to the interim orders passed in the said writ petitions, provisional unit cost was fixed by the Government of India and communicated to the Director of Sugar, Government of Tamil Nadu for necessary action. The Director of Sugar / second respondent herein in-turn on 11.03.2015 requested the sugar mills to compute the cane price as per Clause 5A for the years from 2004-2005 to 2008-2009.

2.6. Challenging the same, the writ petitioner/appellant has filed W.P.No.7872 of 2015, praying for a Writ of Certiorarified Mandamus to



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quash the above proceedings of the Control Order dated 09.03.2015 and the letters dated 11.03.2015 and 13.03.2015 of the Director of Sugar and to forbear the respondents from determining the value of sugar in terms of the omitted Schedule II and declare any price fixed over and above the price fixed under Clause 3 of the Control Order.

3. The writ petition, after contest, came to be dismissed along with connected writ petitions, vide common order dated 13.02.2019, against which the instant writ appeal is filed.

4. Mr.P.S.Raman, learned Senior Counsel appearing for the appellant submits that Clause 5(A) of the Control Order stood omitted and hence, ceased to have effect from 22.10.2009 and such omission is not saved in terms of Section 6 of the General Clauses Act, 1897, since it applies to enactments and regulations and the Control Order issued in exercise of the executive power of the Government of India under Section 3 of the Essential Commodities Act, will not fall within the definition of enactment under the General Clauses Act. It is further



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submitted that the Control Order is neither an Act nor a regulation and hence, Section 6 of the General Clauses Act does not apply. The learned Senior Counsel for the appellant further submitted that even when Clause 5A and the Second Schedule were there in the Control Order, "L" Factor can be fixed by taking note of empirical data of the entire country and not based on two States viz., Tamil Nadu and Pondicherry and even assuming there is power to determine the "L" factor, the private Sugar Mills are entitled to plead set off, since they have made payments to cane growers, namely, the payments made on the State Advisory price, which is over the price fixed under Clause 3 of the Control Order. It is contended by the learned Senior Counsel for the appellant that the Writ Court erred in holding that 2009 amendment to the Sugarcane Control Order is prospective in nature and will not affect rights already accrued by the farmers under Clause 5A prior to the amendment and further, the Writ Court failed to consider that the omission of Clause 5A has the effect of obliterating the provision from the Sugarcane Control Order, as if it had never existed and therefore, prayed for setting aside the order of the Writ Court. The learned Senior Counsel for the appellant has relied



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upon the following decisions, in support of his contentions:

(i) Kolhapur Canesugar Works Ltd., v. Union of India [(2000) 2 SCC 536],

(ii) Darius Rutton Kavasmaneck v. Gharda Chemicals Ltd., [(2015) 14 SCC 277],

(iii) DS Nakara v. Union of India [(1983) 1 SCC 305]

(iv) Air India v. Nergeesh Meerza [(1981) 4 SCC 335]

(v) Jitendra v. Peerless General Finance [(2013) 8 SCC 769]

(vi) Fibre Boards (P) Ltd., v. CIT [(2015) 10 SCC 333]

(vii) Shree Bhagwati Steel Rolling Mills v. CCE [(2016) 3 SCC 643]

(viii) MGB Gramin Bank v. Chakrawarti Singh [(2014) 13 SCC 583].

(ix) JN Ganatra v. Morvi Municipality [(1996) 9 SCC 495].

5. Mr.AR.L.Sundaresan, learned Additional Solicitor General appearing for the first respondent contended that Clause 5A of the Sugarcane (Control) Order was omitted on 22.10.2009 and the notification by which it was omitted does not indicate explicitly or



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impliedly the intention that it is deemed not to have been in existence in the Sugarcane (Control) Order and in the absence of such express or implied intention, the omitted provision having continued in the Act, till 22.10.2009, cane growers, who are entitled to fixation of additional price, are entitled to have the said benefit for the period upto 22.10.2009. It is further contended by the learned Assistant Solicitor General for the first respondent that Sections 6 and 6A of the General Clauses Act may not apply to the Sugarcane (Control) Order, it being a subordinate legislation, the principles of interpretation of statutes which is embodied in the said Sections will be applicable and if so, the omission will take effect only prospectively, that is for the period after 22.10.2009. The learned Additional Solicitor General, in support of his contentions, has placed reliance upon the following decisions:

(i) Mahabir Sugar Mills Pvt. Ltd., v. Union of India [1974 SCC

Online All 335]

(ii) A.P.State Electricity Board v. Union of India [1988 Supp

SCC 371]

(iii) P.V.Mohd Barmay Sons v. Director of Enforcement [1993

Supp (2) SCC 724]



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6. Mr.Haja Nazirudeen, learned Additional Advocate General appearing for the second respondent would contend that the appellant Association Mill owners are bound to act in conformity with the terms of the contract entered into with the sugarcane growers and the vested right or the absolute right of the cane growers to receive the amount as being fixed by the Central Government cannot be denied and however, contrary to the terms as agreed between the mill owner and the sugarcane grower, the appellant had ventured into asserting that by virtue of 'omission' of Clause 5A, the mill owner is not liable to pay the amount which was accrued and the right was crystalized at the time of effecting the supply. The learned Additional Advocate General has relied upon the following judgments:

***(i) State of Orissa and another v. M/s.M.A. Tulloch & Co.,
[(1964) 4 SCR 461 : AIR 1964 SC 1284]***

***(ii) Fibre Boards Private Ltd., Bangalore v. Commissioner of
Income Tax, Bangalore [(2015) 10 SCC 333]***

***(iii) Shree Bhagawati Steel Rolling Mills v. Commissioner of
Central Excise and another [(2016) 3 SCC 643].***



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7. This Court has considered the submissions made and also perused the materials on record.

8. The crux of the issue herein revolves around the amendment to the Sugarcane (Control) Order 1966. Therefore, it is necessary to take note of the position prior to the amendment in 2009 and post amendment scenario.

9. The Essential Commodities Act, 1955 [Act No.10 of 1955] was enacted with the objects and reasons to provide, in the interests of the general public, for the control of the production, supply and distribution of, and trade and commerce, in certain commodities.

9.1. As per Section 2(e) of the EC Act "**sugar**" means-

- (i) any form of sugar containing more than ninety per cent, of sucrose, including sugar candy ;
- (ii) khandsari sugar or bura sugar or crushed sugar or any sugar in crystalline or powdered form; or
- (iii) sugar in process in vaccum plan sugar factory or raw sugar produced therein.

Undisputedly, sugarcane is declared as an essential commodity under the EC Act.



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9.2. Section 2A which stood inserted by Central Act No.54 of 2006, w.e.f., 12.02.2007, in sub-section (1) therein, states that for the purposes of the EC Act, "essential commodity" means a commodity specified in the schedule.

9.3. Section 3 deals with power to control production, supply and distribution of essential commodities. As per Sub-Section (1) of Section 3, if the Central Government was of view that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, or for securing any essential commodity for the defence of India or the efficient conduct of military operations, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof, trade and commerce therein.

9.4. The Sugarcane (Control) Order, 1966 was issued by the Central Government in exercise of the power conferred under Section 3



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of the EC Act, which contained 12 Orders / Provisions and 3 Schedules.

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Clause 3 of the Control Order deals with Fair and Remunerative Price of sugarcane payable by producer of sugar, for brevity, it shall be referred as 'FRP'. Clause 5 provides for additional price for sugar cane purchase, which shall be in addition to the FRP.

9.5. Clauses 5 and 5A which stood prior to the amendment is quoted hereunder:

"5. Additional price for sugarcane purchased.-

(1) Where a producer of sugar or his agent purchases any sugarcane from a grower of sugarcane or a growers' co-operative society during each of the four successive years beginning on the 1st day of November, 1958, the producer shall, in addition to the minimum price of sugarcane fixed under sub-clause (1) of Clause 3 pay to the grower or the cooperative society, as the case may be, an additional price, if found, due, in accordance with the provisions 6 [of the First Schedule] hereto annexed.

(2) Nothing in sub-clause (1) shall apply to the purchase of sugarcane,—

(a) where such sugarcane is used for the production of sugar in a newly established factory until the expiry of three years commencing from the year in which the factory is so established;

(b) where the purchase is made by a producer of sugar, which is a co-operative society, from the members of that co-operative society.



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

(4) The Central Government may appoint any person or authority as it thinks fit for the purpose of determining the additional price due from a producer of sugar under sub-clause (1) for each of the successive four years beginning on the 1st day of November, 1958 and when the price is so determined, the person or authority, as the case may be, shall intimate the same in writing to the producer and to the growers' co-operative societies or the local growers' associations, if any, connected with the supply of sugarcane to the factory.

(5) (a) Any producer of sugar or grower of sugarcane or growers' co-operative society who or which feels aggrieved by any decision of the person or authority referred to in sub-clause (4), may, within thirty days from the date of communication of such decision under that sub-clause, appeal to the Central Government:

Provided that the Central Government may, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the aforesaid period of thirty days, admit the appeal if presented within a further period of fifteen days.

(b) The Central Government may, after giving an opportunity to the appellant to represent his case and after making such further enquiry as may be necessary, pass such order as it thinks fit.

(c) The decision of the officer or authority referred to in sub-clause (4) where no appeal is filed, and of the Central Government where an appeal is filed, shall be final. (6) The



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price determined under sub-clause (4) or sub-clause (5), as the case may be, shall be paid at such time and in such manner as the Central Government may from time to time direct.

(7) Where any payment has been made in accordance with the directions issued by the Central Government under sub-clause (2) of Clause 5 as it stood immediately before the commencement of the Sugarcane (Control) (Amendment) Order, 1962, then, notwithstanding anything contained in the foregoing provisions of this clause, such payment shall be deemed to have been made in lieu of the payment provided for in this clause as if that sub-clause were in force when the direction was issued or payment was made.

[5-A. Additional price for sugarcane purchased on or after 1st October, 1974.—

(1) Where a producer of sugar or his agent purchases sugarcane from a sugarcane grower during each sugar year, he shall, in addition to the minimum sugarcane price fixed under Clause 3, pay to the sugarcane grower an additional price, if found due in accordance with the provisions of the Second Schedule annexed to this Order.

(2) The Central Government or the State Government, as the case may be, may authorise any person or authority, as it thinks fit for the purpose of determining the additional price payable by a producer of sugar under sub-clause (1) and the person or authority as the case may be, who determines the additional price, shall intimate the same in writing to the producer of sugar and the sugarcane grower connected with the supply of sugarcane to such producer of sugar.

(3) (a) Any producer of sugar or sugarcane grower, who is aggrieved by any decision of the person or authority referred to in sub-clause (2), may, within thirty days from the



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date of communication of such decision under that sub-clause, appeal to the Central Government or the State Government as the case may be:

Provided that the Central Government or the State Government, as the case may be, may, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the aforesaid period of thirty days admit the appeal, if presented within a further period of fifteen days.

(b) The Central Government or the State Government, as the case may be, may, after giving an opportunity to the appellant to represent his case and after making such further enquiry as may be necessary pass such order as it thinks fit.

(c) The decision of the person or authority referred to in sub-clause (2) where no appeal is filed, and of the Central Government or State Government, as the case may be, where an appeal is filed shall be final. It shall be paid by the producer of sugar to the sugarcane grower, at such time and in such manner as the Central Government or the State Government, as the case may be, may, from time to time direct.

(5) No additional price determined under sub-clause (2) or sub-clause (3), as the case may be, shall become payable by a producer of sugar who pays a price higher than the minimum sugarcane price fixed under Clause 3 to the sugarcane grower:

Provided that the price so paid shall in no case be less than the total price comprising the minimum sugarcane price fixed under Clause 3 and the additional price determined under sub-clause (2) or sub-clause (3), as the case may be.

(6) Where any extra price is paid by the producer of sugar to the sugarcane grower for the supply of sugarcane in addition to the minimum sugarcane price fixed under Clause 3, the extra price so paid shall be adjusted against the additional sugarcane price determined under sub-clause (2) or sub-clause (3), as the case may be, and the balance, if any, shall be paid to the sugarcane grower.



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(7) Subject to the provisions of sub-clause (4), the additional price shall become payable to a sugarcane grower if he in performance of his agreement with a producer of sugar supplies not less than 85 per cent of the sugarcane so agreed:

[Provided that the additional price shall become payable to a sugarcane grower, even when he supplies less than 85 per cent of the sugarcane so agreed, if for the same supply he has not been subjected to any penalty by or under any Central or [State Act](#) or any rules or orders made hereunder for his failure to supply 85 per cent of sugarcane so agreed.]

(8) Where the additional price determined under sub-clause (2) or sub-clause (3), as the case may be, is paid to a sugarcane growers' co-operative society or the local sugarcane growers' association of whatever name it may be called, it shall disperse the said additional price to such of its member who has supplied not less than 85 per cent of the agreed sugarcane in performance of his agreement with it, within one month of the receipt of such additional price by it from the producer of sugar.

(9) The additional price payable but not actually paid in view of sub-clause (7) shall be added to the amount found payable for the following sugar year arrived at as per provisions of the Second Schedule.

[(10) In case, the additional price determined under sub-clause (2) or sub-clause (3), as the case may be, remains unpaid on account of the sugarcane grower not coming forward to claim it 3 [x x x x x], it shall be deposited by the producer of sugar with the Collector of the District in which the factory is situated, within six months of the close of the sugar year. The Collector shall pay out of the amount so deposited all claims, considered payable by him and preferred before him within three years of the close of the sugar year in which the sugarcane was supplied to the factory. The amount still remaining undisbursed with the



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Collector, after meeting the claims of the sugarcane growers, shall be credited by him to the Consolidated Fund of the State, immediately after the expiry of the time limit of three years within which claims therefor could have been preferred by the sugarcane growers. The State Government shall as far as possible, utilise such amounts for the development of sugarcane in the State.]

[(11) Where any producer of sugar or his agent has defaulted in paying the whole or any part of the additional price of sugarcane within the time specified in this regard by the Central Government or an officer authorised by Central Government in this behalf or the State Government or an officer authorised by the State Government in this behalf, then such Government or officer may after making such enquiries or calling for such additional information from the producer of sugar or his agent as deems fit, or on the basis of claims of the sugarcane growers, forward to the Collector of the district in which the factory is situated a certificate specifying the amount of arrears of additional price of sugarcane due from the producer of sugar or his agent for its recovery as arrears of land revenue.

(12) The Collector on receipt of such certificate shall proceed to recover from such producer of sugar or his agent the amount specified therein as if it were arrears of land revenue.

(13) After effecting the recovery, the Collector shall intimate to the concerned growers of the sugarcane or the concerned sugarcane growers co-operative societies through a public notice to submit their claims in such a manner as he considers appropriate within thirty days:

Provided that the Collector may, for the reason to be recorded in writing allow the submission of claims after the period so specified if he is satisfied that there was sufficient cause for not submitting such claim earlier.



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(14) If the amount recovered is less than the amount specified in the certificate under sub-clause (11), the Collector shall distribute the amount so recovered to the concerned growers of the sugarcane or the concerned sugarcane growers co-operatives in proportion to the ratio determined by the Collector on the basis of the sugarcane supplied by the concerned growers of sugarcane or the sugarcane growers' co-operative society as the case may be.

(15) If the amount recovered and distributed under sub-clause (14) is less than the amount specified in the certificate under sub-clause (11), the Collector shall proceed to recover the remaining amount as if it were arrears of land revenue till the full amount is recovered and distributed to satisfy the remaining claims.

(16) If the amount is given to the concerned sugarcane growers' co-operative societies, it shall distribute the amount through cheque, draft, or any other recognised banking instrument on any Scheduled Bank to the concerned sugarcane growers within ten days of the receipt of the amount from the Collector.

(17) If the concerned sugarcane grower or the concerned sugarcane growers' co-operative society do not come forward to claim or collect the amount so recovered by the Collector within three years from the date of the public notice referred to in sub-clause (13), the unclaimed amount shall be deposited by the Collector in the Consolidated Fund of the State.]

Explanation.—For purposes of this clause and the Second Schedule.— (1) “Sugarcane grower”, includes a grower of sugarcane, a sugar growers' co-operative society, or a sugarcane growers' association of whatever name it may be called and who enters into an agreement with a producer of sugar to supply sugarcane;



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(2) “Sugar year” means the year commencing on the 1st day of October and ending with the 30th day of September in the year next following;

[(3) “Ethanol” means anhydrous ethyl alcohol of minimum 99% strength, produced directly either from sugarcane juice or B-Heavy molasses or both;

(4) When a sugar factory manufactures ethanol directly from sugarcane juice or B-Heavy molasses, then every 600 liters of ethanol so produced directly from sugarcane juice or B- Heavy molasses shall be taken as equivalent to one ton production of sugar.]]

10. By Gazette Notification, dated 22.10.2009, the Control Order was amended and the salient feature of the amendment being (a) for the words “minimum price”, wherever they occur, the words “fair and remunerative price” was substituted. In clause (2) after sub-clause (c), clause (cc), was inserted which defined “fair and remunerative price of "sugar cane”, means the price fixed by the Central Government under clause (3) from time to time for sugar cane. In clause (3) in sub-clause (1) after item (f), clause (g) was inserted which states that reasonable margins for the growers for sugarcane on account of risk and profits, (d) after clause (3A), clause (3B), was inserted, which is as follow:-



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If any authority or State Government fixes any price above the fair and remunerative price fixed by the Central Government under clause 3, such authority or State Government, shall pay the amount, which it fixes above the fair and remunerative price as fixed by the Central Government, to the grower of sugarcane or to the sugarcane growers' cooperative society, as the case may be”

11. The primordial contention of the appellant is that by virtue of 2009 amendment to the Sugarcane Control Order, Statutory Minimum Price (SMP) was substituted by Fair Remunerative Price (FRP), which includes consideration of additional factor in fixing cane price, namely reasonable returns and consequent upon the amendment, Clause 5A and Second Schedule to the Control Order stood omitted with effect from 22.10.2009 and at this juncture, the first respondent has no jurisdiction to determine "L" factor for the sugar season 2004-2009. It is further contended that Clause 5A of the Control Order stood omitted and ceased to have effect from 22.10.2009 and such omission is not saved in terms of Section 6 of the General Clauses Act, 1897, since it applies only to enactments ad regulations and the Control Order issued in exercise of



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executive power of the Government of India under Section 3 of the EC Act, will not fall within the definition of enactment under the General Clauses Act and since the Control Order is neither an Act nor a regulation, Section 6 of the General Clauses Act does not apply.

"12. Section 6 of the General Clauses Act reads as follows:

"6.Effect of repeal: ?Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."



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Section 6 of the General Clauses Act is very clear that when a Central Act or Regulation is repealed, unless a different intention appears, the repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed.

Savings of rights acquired

13. The effect of Clauses (c) to (e) of Section 6 of the General Clauses Act is, briefly speaking, to prevent the obliteration of a statute in spite of its repeal to keep intact rights acquired or accrued and liabilities incurred during its operation and permit continuance or institution of any legal proceedings or recourse to any remedy which may have been available before the repeal for enforcement of such rights and liabilities, as laid down by the Hon'ble Supreme Court in ***Gajraj Singh v. State Transport Appellate Tribunal [(1997) 1 SCC 650]***.

Subordinate Legislation under Repealed Statute

14. It is a general principle that a Statute, after its repeal, is as completely effaced from the statute book as if it had never been enacted,



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subordinate legislation made under a statute ceases to have effect after repeal of the statute. This result can be avoided by insertion of saving clauses providing to the contrary. When a statute is repealed and re-enacted, Section 24 of the General Clauses Act provides for continuation of any appointment, notification, Order, scheme, form, rule or bye-law made or issued under the repealed statute insofar as it is not inconsistent with the provisions re-enacted. Such appointments, notifications, Orders etc., are deemed to be made under the corresponding provisions of the new statute and continue to be in force unless superseded by appointments, notifications, Orders, etc., made or issued under the new statute.

15. Law is a game of words — this quote holds true when courts are presented with the challenging task of differentiating between terms which sometimes appear to have a similar connotation. For example, the words ‘repeal’ ‘substitute’ and ‘omission’ have different tenor in a literal sense but tend to denote a similar meaning when used in the context of any amendment of law. While the words themselves may not cause a



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conflict, it's the consequences of the amendment on the rights and liabilities of the parties that have led to the courts differentiating between these terms. In the aforementioned backdrop, we will discuss the way the Supreme Court has dealt with these three terms used by the legislature while amending any law and whether the conflict between these words continues to be a cause of melee in interpretation.

16. One of the earliest authorities which brought up the question of interpretation between 'repeal' and 'omission' is the five-Judge Bench judgment of the Supreme Court in ***Rayala Corporation (P) Ltd. v. Director of Enforcement, New Delhi [(1969) 2 SCC 412]***. The Apex Court brought to the fore Section 6 of the General Clauses Act, 1897 (the GC Act) for the purpose of distinguishing between the terms 'repeal' and 'omission' since Section 6 saves the power of prosecution and punishment for acts committed in a repealed legislation. The Court while differentiating the two terms held that:

“Section 6 of the General Clauses Act cannot obviously apply on the omission of Rule 132-A of the DI Rules for the two obvious reasons that Section 6 only applies to repeals and not to omissions, and applies when



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the repeal is of a Central Act or Regulation and not of a Rule.”

In the above judgment, the Hon'ble Supreme Court did not discuss the two terms ‘repeal’ and ‘omission’ before coming to the said conclusion. There is no discussion on how the two terms are separate and whether they can be used interchangeably.

17. ***Rayala Corporation case*** (cited supra) came for consideration before the five-Judge Bench of Supreme Court in ***Kolhapur Canesugar Works Ltd. v. Union of India [(2000) 2 SCC 536]***. wherein the Apex Court dealt with the definitions of ‘Central Act’, ‘enactment’, ‘regulation’, ‘rule’ as defined in Sections 3(7), 3(19), 3(50) and 3(51) respectively in the General Clauses Act and held that Section 6 only applies to Central Act and regulations. The Apex Court further stated that:

"When the Legislature by clear and unambiguous language has extended the provision of Section 6 to cases of repeal of a ‘Central Act’ or ‘regulation’, it is not possible to apply the provision to a case of repeal of a ‘rule’ Section 6 is applicable where any Central Act or Regulation made after commencement of the General Clauses Act repeals any enactment. It is not applicable in



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the case of omission of a “rule”.”

The aforesaid judgment neither deals with the distinction between the terms omission and repeal, nor were any arguments regarding the same were raised before the Bench. It simply dealt with the applicability of Section 6 of the General Clauses Act in context of the rules and upholds ***Rayala Corporation*** judgment. But reading between the lines of ***Kolhapur Canesugar*** judgment, it can be said that it makes no distinction between repeal and omission. In para 37 of the judgment, the Apex Court states that:

*“37. The position is well known that at common law, the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute book as completely as if it had never been passed, and the statute must be considered as a law that never existed. To this rule, an exception is engrafted by the provisions of Section 6(1). If a provision of a statute is unconditionally omitted without a saving clause in favor of pending proceedings, all actions must stop where the omission finds them, and if final relief has not been granted before the omission goes into effect, it cannot be granted afterwards. **Savings of the nature contained in Section 6 or in special Acts may modify the position.** Thus the operation of repeal or deletion as to the future and the past largely depends on the savings applicable.”*
(emphasis supplied)



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From the emphasised lines above, it can be seen that the Court uses the term repeal, omission and deletion interchangeably. This is also inferable that in case a provision is omitted, Section 6 may change the position which is contrary to ***Rayala Corporation*** judgment. ***Rayala Corporation supra*** clearly states that Section 6 of GCA is only applicable to the matters of repeal. So even though it upheld ***Rayala Corporation*** judgment, it did not distinctly lay out the distinction between the two terms. Further, both the cases (***Kohlapur Canesugar and Rayala Corporation***) have not considered Section 6-A of the General Clauses Act, which has been reproduced hereinafter:

“6-A. Repeal of Act making textual amendment in Act or Regulation.— Where any [Central Act] or Regulation made after the commencement of this Act repeals any enactment by which the text of any [Central Act] or Regulation was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.”

18. In ***General Finance Co. v. Assistant Commissioner of Income Tax, Punjab [(2002) 7 SCC 1]***, an argument was raised stating



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that the earlier two judgments neither discussed the distinction between the two terms, nor they considered Section 6-A of the General Clauses Act. It was further argued that the “use of the words ‘repeals by express omission, insertion or substitution’ will cover different aspects of repeal; that this is a further legislative indication that ‘omission’ also amounts to a ‘repeal’ of an enactment.” However, the Court rejected the argument in light of the above two five-Judge Bench judgments of the Supreme Court and also refused to refer the matter to a larger Bench.

19. The matter was however finally dealt in length by a two-Judge Bench judgment of the Hon'ble Apex Court in ***Fibre Boards (P) Ltd., Bangalore v. Commissioner of Income Tax, Bangalore [(2015) 10 SCC 333]***, where the view was that ***Rayala Corporation supra*** needs a reconsideration for omission of a provision results in abrogation or obliteration of that provision in the same way as it happens in repeal. The Court discussed the two terms and concluded that “*it is clear that repeals may take any form and so long as a statute or part of it is obliterated, such obliteration would be covered by the expression “repeal” in*



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Section 6 of the General Clauses Act.” The Apex Court then went ahead and nullified the effect of the above five-Judge Bench judgment with respect to difference between repeal and omission. The Apex Court held that:

“31... once it is found that Section 6 itself would not apply, it would be wholly superfluous to further state that on an interpretation of the word “repeal”, an “omission” would not be included. We are, therefore, of the view that the second so-called ratio of the Constitution Bench in Rayala Corporation (P) Ltd. cannot be said to be a ratio decidendi at all and is really in the nature of obiter dicta.”
(emphasis supplied)

The Apex Court even declared that the above two five-Judge Bench decisions in *Rayala Corporation case* and *Kolhapur Canesugar case* were *per incuriam*, as they did not consider Section 6-A of the General Clauses Act. The Apex Court with this effect held that:

“33. A reading of this section would show that a repeal by an amending Act can be by way of an express omission. This being the case, obviously the word “repeal” in both Section 6 and Section 24 would, therefore, include repeals by express omission. The absence of any reference to Section 6-A, therefore, again undoes the binding effect of these two judgments on an application of the ‘per incuriam’ principle.”



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20. The same two-Judge Bench of the Hn'ble Supreme Court in *Fibre Boards case*, once again decided the issue in detail in *Shree Bhagwati Steel Rolling v. Commissioner of Central Excise [(2016) 3 SCC 643]* and held that delete and omit are used interchangeably, so that when the expression repeal refers to delete, it would necessarily take within its ken an omission as well. The Court further observed that all these expressions only go to form and not to substance. It also reiterated its stand in *Fibre Boards case* and held that “*This again does not take us further as this statement of the law in Rayala Corporation is no longer the law declared by the Supreme Court after the decision in the Fibre Boards case.*”

21. The decision in *Fibre Boards and Shri Bhagwati Mills though* rendered by two-Judge Benches of the Hon'ble Supreme Court, nullified the earlier Constitution Bench judgments by routing through the principle of *per incuriam*. It is a welcoming judgment as it finally clarifies that practically there exist no difference between the two terms. A plain reading of these words repeal, omission and substitute will



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convey more or less the same meaning - that it is a form of 'amendment'.

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22. The Supreme Court in ***Bhagat Ram Sharma v. Union of India***

[1998 Supp SCC 30] echoed the same view and held that:

“It is a matter of legislative practice to provide while enacting an amending law, that an existing provision shall be deleted and a new provision substituted. Such deletion has the effect of repeal of the existing provision. There is no real distinction between ‘repeal’ and an ‘amendment’.”

23. Despite the above judgments holding that practically there exists no difference between these words, the interpretation of the terms continues to lock horns, as there are huge consequences on the rights and liabilities of the parties due to amendments. ***The conflict arises when the legislature does not provide a ‘saving clause’ or it leaves doubt as to the future course of action in case of an amendment. The ‘intention’ of the legislature does not become apparent at the time of amendment which leaves it for the Court to ‘interpret’ the legislative intent and policy behind such repeal, omission and substitution.***



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24. Thus, it is for the Court to interpret the legislative intent and policy behind such repeal, omission and substitution.

25. The sheet anchor of the argument of the appellants is that after the amendment in 2009 to the Sugarcane Control Order, deleting the Statutory Minimum Price and substituting Fair and Remunerative Price consequently omission of Second Schedule with effect from 22.10.2009 leads to a situation where the first respondent has no jurisdiction to determine the "L" Factor for the sugar seasons 2004-2005 to 2008-09. It is further contended that omission of a Second Schedule with effect from 22.10.2009 is a deletion and no action can be taken on deleted / omitted provision since Section 6 of the General Clauses Act would have no application to a Control Order which is neither an enactment nor a regulation in terms of Section 6 of the General Clauses Act.

26. The Writ Court, taking into consideration the scope of Essential Commodities Act, the object of the Sugarcane Control Order,



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the decisions of the Hon'ble Supreme Court in *Union of India v. Cynamide India Ltd and another [(1987) 2 SCC 720]* and *K.Ramanathan v. State of Tamil Nadu and another [(1985) 2 SCC 166]*, observed that no attempt can be permitted to be made to dilute the object and if done, would be against the public interest.

27. The right of cane growers to be entitled for Statutory Minimum Price (SMP) is a statutory right. It accrues on the date when supply of sugarcane is made to the sugar mills. The Central Government, though thought fit to introduce a new system of determining fair price and brought into effect Fair Remunerative Price, that would not in any manner affect the rights of cane growers to be entitled to SMP, which was very much available in the Sugarcane Control Order at the relevant time during which supply of sugarcane has been done.

28. In *Sikkim Subba Associates v. State of Sikkim [(2001) 5 SCC 629]*, the Hon'ble Apex Court held that mere retrospective deletion could not be *per se* have the effect of nullifying or destroying orders passed or



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acts already performed, when such powers were available in the absence of any specific statutory provision enacted to destroy all such rights already acquired or obligations and liabilities incurred.

29. It was not the case of the appellant that at the relevant time, the cane growers were not entitled for Statutory Minimum Price. Their main contention is that the Central Government as on date, could not have fixed "L" factor after 2009 amendment. As stated earlier, the rights have accrued with the cane growers and the right which has accrued for all the relevant years upto the year 2009 cannot be obliterated or wiped away by virtue of the amendment introducing a different system for ensure of fair price for the cane growers.

30. The intention of the legislature has to be borne in mind. It is to be reiterated that right to be entitled to a fair Statutory Minimum Price became vested right of the cane growers and merely because a new type of procedure was prescribed to determine the fair price payable to the cane growers, it cannot destroy the accrued and vested rights and by introducing a new procedure after 2009, the Government was clear in its



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intention to preserve all rights and liabilities under the earlier control order and it never intended to modify or obliterate them altogether.

31. The learned Judge has rightly held in the impugned order that the question of going into what is the effect of repeal or omission or deletion become entirely academic in the facts and circumstances of the case.

32. The learned Senior Counsel for the appellant also raised a contention that Section 6 of the General Clauses Act will not be applicable to Sugarcane (Control) Order, which is a subordinate legislation. The said contention of the learned Senior Counsel cannot be countenanced for the reason that in the light of the Constitution Bench judgments of the Hon'ble Supreme Court cited supra, the terms 'repeal' and 'omission' interchangeably used having same meaning and therefore, the omission of Section 5A of the Sugarcane Control (Amendment) Order, 2009 would apply only prospective in nature and it cannot be construed retrospectively.



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33. It is trite law that if the amendment is substantive in nature or if it affects the vested rights of parties, then it will have a prospective effect but if it is procedural in nature, i.e., if the amendment changes jurisdiction, affects evidence, pleadings, or practice only, then it can have a retrospective effect too. It has also been held by the Supreme Court in the case of ***K.C. Arora v. State of Haryana [AIR 1987 SC 1858]*** that if the statute does not specifically provide for the retrospective application, then the statute will be said to have prospective effect only. Therefore, this Court is of the view that the said contention of the learned Senior Counsel for the appellant is liable to be rejected.

34. The effect of Section 6 of General Clauses Act is not to repeal anyone of those laws or abrogate them. Its object is to simply by-pass them when they are inconsistent with the provisions of Essential Commodities Act or the orders made thereunder. The said principles has been laid down by the Hon'ble Supreme Court in ***M/s.Ram Chandra Mawa Lal, Varanasi and Others. v. State of U.P. and Others [1984***



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(Suppl) SCC 28].

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35. Nowhere in the amendment in the year 2009, there is any such intention to obliterate or to deny the benefit which has accrued in favour of the cane growers. The Central Government is right in its stand that the Sugarcane Control Amendment Order, 2009 dated 22.10.2009 is prospective with effect from the date of its publication in the Official Gazette and no time limit has been fixed for arriving at "L Factor. Such a ground cannot be raised by the appellant to deny and defeat the vested rights of the cane growers. The Writ Court has considered all the aforesaid aspects in proper perspective and this Court, in exercise of its appellate jurisdiction, finds no reason to interfere with the order of the Writ Court and accordingly the writ appeal is liable to be dismissed.

36. In the light of the reasons assigned above, the Writ Appeal stands dismissed, confirming the order of the Writ Court dated 13.02.2019 made in W.P.Nos.7872 of 2015 etc., batch. No costs. Consequently, connected miscellaneous petition is dismissed.



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[D.K.K., J.,] [P.B.B., J.]
19.10.2023

Index:yes/no

Internet:yes

Jvm

To

- 1.The Secretary / Deputy Secretary to Government,
The Union of India,
Ministry of Consumer Affairs, Food and Public Distribution,
Krishi Bhavan, New Delhi-110 114.
- 2.The Director of Sugar and Cane Commissioner of Tamil Nadu,
690, Anna Salai, Nandanam, Chennai-600 035.
- 3.The Vice President,
Tamil Nadu Karumbu Vivasayigal Sangam
(Regn. No.19/88),
Mr.D.Ravindran, S/o. P.Dharmalingam,
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**D.KRISHNAKUMAR, J.,
&**

P.B.BALAJI, J.

Jvm

**Judgment in
W.A.No.1850 of 2019**

19.10.2023