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W.P. No.28620



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 03.03.2023

Pronounced on: 01.06.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P. No.28620 of 2014

and MP.Nos.1 & 2 of 2014

The South Indian Sugar
Mills Association – Tamil Nadu
Rep by its Secretary
'Karumuthu Centre', 2nd Floor,
634, Anna Salai, Chennai – 600 035

...Petitioner

Vs.

1.State of Tamil Nadu,
Rep by the Agricultural Production
Commissioner and Principal Secretary
to Government,
Agriculture Department,
Secretariat, Fort St.George,
Chennai – 600 009.

2.The Director of Sugar,
690, Anna Salai,
Nandanam, Chennai – 600 035.

3.The Union of India,
Rep by the Secretary to Government,
Ministry of Consumer Affairs,
Food and Public Distribution,



Department of Food and
Public Distribution,
Krishi Bhavan, New Delhi – 110 114.

4.K.M.Gopalakrishnan
[R4 impleaded vide Order dated
08.04.2021 made in WMP.No.6460 of 2018
in W.P.No.28260 of 2014]

5.Tamil Nadu KarumbuVyvasayigal Sangam
(Regn.No.19/88), Rep.by its General Secretary,
No.46-A, V.O.C.Street, Kasthuribai Nagar,
Tambaram West, Chennai – 600045.
[R5 impleaded vide Order dated
16.11.2022 made in MP.No.1 of 2015 in
W.P.No.28260 of 2014]

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus calling for the records of the First Respondent comprised in its G.O.Ms.No.252 Agricultural Department (K1) dated 24.12.2013 and the records of the Second Respondent comprised in its consequent letter in Rc.No.3774/Cane.1/2013 dated 8.1.2014 and quash the same as being illegal, arbitrary, without jurisdiction and ultra vires the provisions of the Sugarcane (Control) Order, 1966, in so far as the petitioner is concerned, and consequently forbear the First and Second Respondents from declaring any other price over and above the Fair and Remunerative Price fixed by the Third Respondent under Clause 3(1) of the Sugarcane Control Order, 1966 in respect of sugarcane purchased by the members of the petitioner for the sugar season 2013-14 and onwards.



For Petitioner: Mr.SatishParasaran
Senior Counsel
for Mr.R.Parthasarathy
&Mr.N.Surya Narayanan

For Respondents : Mr.HajaNazrudeen
Additional Advocate General
For Mr.Alagu Gowtham
Government Advocate – R1 & R2
Mr.J.Madana Gopal Rao –R3
Senior Central Government Standing Counsel
Mr.R.Gururaj - R4
Mr.N.G.R.Prasad – R5

ORDER

The State of Tamil Nadu houses a total of 43 sugar mills, of which two constitute public sector mills, 16 are Cooperative Sugar Mills and 25, private mills. The present Writ Petition is filed by the South Indian Sugar Mills Association in which, 12 of the 16 private mills are members, represented by Mr.Satish Parasaran, learned Senior Counsel on behalf of Mr.R.Parthasarathy.

2. The petitioner mills are engaged in the manufacture and trading of sugar. Sugar and sugarcane have been declared to be essential commodities by the Government of India under the Essential Commodities Act, 1955 (in short 'Act'). In line with the powers conferred under Article 3 of the Act, Sugarcane (Control) Order 1966 (in short 'Control Order') has been issued, which provides for various



procedures and regulations in connection with the production, including licencing, pricing and transportation of sugarcane.

3. The object of the Act and Control Order is to ensure that a balance is struck between the interests of all stakeholders engaged in supply of sugar, i.e., cane growers, the sugar mills and the consumer. Having balanced their interests, such equilibrium is set against the context of adequacy in supply of sugar for every sugar production season. In Tamil Nadu, the Tamil Nadu Sugar Factories Control Act, 1949 (in short '1949 Act') held the field, till the passing of the 1955 Act which, by virtue of Section 16 of the Act, reading as follows, repealed earlier State enactments in regard to the supply of this commodity:

"16. Repeals and savings.-(1) The following laws are hereby repealed

(a) the Essential Commodities Ordinance, 1955 (1 of 1955);

(b) any other law in force in any State immediately before the commencement of this Act insofar as such law controls or authorizes the control of the production, supply and distribution of, and trade and commerce in, any essential commodity.

(2) Notwithstanding such repeal, any order made or deemed to be made by any authority whatsoever, under any law repealed hereby and in force immediately before the commencement of this Act shall, insofar as such order may be made under this Act, be deemed to be made under this Act and continue in force, and accordingly any appointment made, licence or permit granted or direction issued under any such order and in force immediately before such commencement shall continue in force until and unless it is superseded by any appointment made, licence or permit granted or direction issued under this Act."



(3) The provision of sub-section (2) shall be without prejudice to the provision contained in section 6 of the General Clauses Act, 1897 (10 of 1897), which shall also apply to the repeal of the Ordinance or other law referred to in sub-section (1) as if such Ordinance or other law had been an enactment.”

4. Thus, and in effect, the material provisions of the 1959 State enactment have been rendered inoperative, being Sections 6 to 12. There was some discussion in regard to this aspect of the matter and certain apprehensions were expressed on the power of the State to continue with the procedure and machinery for enabling the mills to set up a factory including the grant of licence. All learned counsel have been heard and the submissions of Mr.Haja Nazrudeen, learned Additional Advocate General hold merit, on this issue.

5. The 1996 Control Order contains, in clause 8, the power to issue directions to purchasers of khandsari sugar, being units, power crushers, crushers and cooperative societies, and enables the Central Government to, by general or special order, issue directions to any of the aforesaid entities in regard to purchase of sugarcane or sugarcane juice, production, maintenance of stocks, storage, price, packing, payment, disposal, delivery and distribution of sugarcane.

6. It also enables, in clause 11, the delegation of powers by Notification in the Official Gazette. Such delegation is to a) any officer or authority of the Central



Government or b) a State Government or any officer or authority of a State Government.

7. In line with the powers as aforesaid, Notifications have been issued, one on 04.07.1977, whereunder the Central Government delegates the powers conferred on it by clauses 6,7,8 and 9 of that order, to be exercisable also by the Cane Commissioner (Directorate of Sugar) in Tamil Nadu and directs that such enabling amendment be notified. To be noted, that Clauses 6 to 9 of the State Order deal with the power to regulate distribution and movement of sugarcane, power to licence power crushers, khandsari units and crushers and to regulate the purchase of sugarcane, power to issue directions to purchasers of khandsari sugar and crushers and power to call for information.

8. Likewise, under G.O.Ms.No.1996 dated 18.10.1976, the Agriculture Department of the Government of Tamil Nadu has directed translation and publication of Notification issued by the Government of India, Ministry of Agriculture and Irrigation, Department of Food dated 24.09.1996 to the effect that the powers conferred by clause 15 of the Control Order relating to delegation of powers shall also be conferred upon the Cane Commissioner (Directorate of Sugar), Tamil Nadu.



9. With this, there is no ambiguity on the position that the 1949 Act does not really command any importance in matters relating to regulation of sugar any further. There is thus no force in the attempts of Mr.R.Gururaj, learned counsel for R4, an Agriculturist, who was impleaded by this Court by order dated 08.04.2021, to state that there is enough legislative ammunition available by way of State enactments to support formulation of the State Advisory Price (SAP). While the other arguments in regard to the veracity or otherwise of the SAP will be tested in the paragraphs to follow, with this clarification, this aspect is laid to rest.

10. The petitioners challenge a Government order issued by the State/R1, which is dated 24.12.2013 as well as a notice issued by the Director of Sugar/R2 dated 08.01.2014. The impugned Government Order was preceded by Notification dated 20.02.2013 issued by Department of Food and Public Distribution fixing Fair and Remunerative Price (FRP) of sugarcane for the 2013-14 sugar season at a sum of Rs.210 per quintal linked to a basic recovery rate of 9.5% subject to a premium of Rs.2.21/- per quintal for every 0.1 percentage point increase in recovery above that level.

11. In the impugned order, the State has gone on to fix a component of price over and above the FRP at a sum of Rs.2,550/- per tonne and transport charges of



Rs.100/- per tonne, in all, a sum of Rs.2,650/- per tonne. The impugned

Government Order reads as follows:

சுருக்கம்
வேளாண்மை - கரும்பு - 2013-2014 அரவைப்
பருவத்திற்குமாநில அரசின் பரிந்துரைவிலைநிர்ணயம் செய்தல் -
ஆணை - வெளியிடப்படுகிறது.

வேளாண்மை (க1) துறை
அரசு ஆணை (நிலை) எண்.252 நாள்: 24.12.2013,
திருவள்ளூர் ஆண்டு 2044,
விஜய - மார்கழி 9.

படிக்கப்பட்டவை:

- 1) அரசாணை (நிலை) எண்.260, வேளாண்மை, நாள் 22.11.2012.
- 2) மத்திய அரசின் நுகர்பொருள், உணவு மற்றும் பொதுவிநியோக அமைச்சகம், உணவு மற்றும் பொதுவிநியோகத் துறை, புதுடில்லி, கடித எண்.3(4)2012.-SP-II நாள் 20.2.2013.
- 3) சர்க்கரைத் துறை இயக்குநர் அவர்களின் கடிதம், ஆர்.சி.எண்.3774/கரும்பு-1/2013, நாள் 08.11.2013.
- 4) வேளாண்மை இயக்குநரின் கடித எண்.CDC S1/80217/13, நாள் 19.11.2013.

ஆணை:-

2012-2013 அரவைப் பருவத்திற்கு, 9.5 சதவிகிதம் பிழிதிறன் உள்ள கரும்புக்கு, டன் ஒன்றுக்கு, மாநில அரசின் பரிந்துரைவிலையாக ரூ.2,250/- மற்றும் போக்குவரத்து செலவு ரூ.100/- ஆக மொத்தம் ரூ.2,350/- என நிர்ணயம் செய்தும், மத்திய அரசு அறிவித்தபடி, 9.5 சதவிகிதம் பிழிதிறனுக்குக் கூடுதலாக உள்ள ஒவ்வொரு கூடுதல் 0.1 சதவிகித பிழிதிறனுக்கும் டன் ஒன்றுக்கு ரூ.17.90 வீதம் ஊக்கத் தொகையாக (Incentive) வழங்கியும் மேலேழுதலாவதாகப் படிக்கப்பட்ட அரசாணையில் ஆணை வெளியிடப்பட்டது.

2) 2013-2014 அரவைப் பருவத்திற்கு நியாயமான மற்றும் ஆதாயவிலையாக (Fair and Remunerative Price) 9.5



சதவிகிதபிழிதிறன் கொண்டகரும்புக்கு, டன் ஒன்றுக்கு ரூ.2,100/- என்றும், ஒவ்வொரு 0.1 சதவீதம் கூடுதல் பிழிதிறனுக்கும், டன் ஒன்றுக்கு ரூ.22.10 வீதம் ஊக்கத் தொகையாக (Incentive) விலைநிர்ணயம் செய்துமேலே இரண்டாவதாகப் படிக்கப்பட்டகடிதத்தில் மத்திய அரசு ஆணை வெளியிட்டுள்ளது.

3) சர்க்கரைத் துறைஆணையர் மேலேமூன்றாவதாகப் படிக்கப்பட்டகடிதத்தில், 2013-14- ஆம் ஆண்டு அரைவப் பருவத்திற்குமாநில அரசின் பரிந்துரைவிலையாகடன் ஒன்றுக்கு ரூ.2,350/. என்றவிலையைநிர்ணயம் செய்யும் பட்சத்திலேயேகூட்டுறவு மற்றும் பொதுத் துறைசர்க்கரை ஆலைகளுக்கு ரூ.281.01 கோடிநிதிப் பற்றாக்குறைஏற்படும் என்றும், அனைத்துகூட்டுறவு மற்றும் பொதுத்துறைசர்க்கரை ஆலைகளின் மொத்தநிதி இழப்பு 2013-14-ம் அரைவப் பருவத்திற்குமட்டும் ரூ.334.85 கோடியாக இருக்கும் என்றும், அதிகமாகவிலைநிர்ணயம் செய்யும் பட்சத்தில் அதற்கேற்பநிதி இழப்பும் அதிகமாகும் என்பதைகருத்தில் கொண்டு விலைநிர்ணயம் செய்யுமாறும் அதற்கேற்றநிதியுதவிசெய்யுமாறும்சர்க்கரைத்துறை இயக்குநர் கருத்துதெரிவித்துள்ளார்.

4) வேளாண்மை இயக்குநர், மேலேநான்காவதாகப்படிக்கப்பட்டகடிதத்தில், சர்க்கரை ஆலைகளின் நிதித் தேவையைகருத்தில் கொள்ளும்போதுகரும்பு விவசாயிகளின் நலனையும் வாழ்வாதாரத்தையும் கருத்திற்கொண்டுகரும்பு விவசாயிகளைதிருப்திப்படுத்தும் வகையில் விலைநிர்ணயம் செய்யுமாறும், இல்லையேல் கரும்பு உற்பத்திகுறையவாய்ப்புள்ளதாகவும் அதனால் மூலப்பொருள் தேவைக் குறைவினால் சர்க்கரை ஆலைகள் பாதிக்கப்படக்கூடும் என்றும் கருத்துதெரிவித்துள்ளார்.

5) சர்க்கரைத் துறை இயக்குநர் மற்றும் வேளாண்மை இயக்குநர் ஆகியோரின் கருத்துக்களை அரசுகவனமாகபரிசீலித்து, மேலும், தமிழககரும்பு விவசாயிகளின் நலனையும், உயர்ந்துவரும் கரும்பு உற்பத்தித் செலவினையும் கருத்தில் கொண்டு, இந்த ஆண்டு 2013-14 கரும்பு அரைவப் பருவத்திற்கு, மாநில அரசின் பரிந்துரைவிலையாகடன் ஒன்றுக்கு 9.5 சதவீதம் வரைபிழிதிறன் கொண்டகரும்புக்கு ரூ.2,550/- என்றும்



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போக்குவரத்துச் செலவு ரூ.100/- சேர்த்து, ஆகமொத்தம் ரூ.2,650/- (ரூபாய் இரண்டாயிரத்து அறுநூற்றிஜம்பதுமட்டும்) என உயர்த்தி ஆணை வெளியிடுகிறது. மேலும், 9.5 சதவிகிதத்திற்கும் அதிகமான பிழிதிறன் கொண்ட கரும்புக்கு, மத்திய அரசு அறிவித்தபடி, ஒவ்வொரு கூடுதல் 0.1 சதவிகித பிழிதிறனுக்கும் டன் ஒன்றுக்கு ரூ.22.10 வீதம் ஊக்கத் தொகை (Incentive) வழங்கவும் அரசு ஆணையிடுகிறது. / ஆளுநரின் ஆணைப்படி/

சந்தீப் சக்ஷேனா
வேளாண்மை உற்பத்தி ஆணையர்
மற்றும் அரசு முதன்மைச் செயலாளர்

12. In consequence thereof, a communication has been issued by R2 on 08.01.2013 indicating to the petitioner mills, the fixation of SAP. Admittedly, there have been coercive measures taken by the respondents to recover the SAP. Though the prayer in the Writ Petition is restricted only to orders passed for sugar season 2013-14, the language in which the prayer is couched is wide insofar as the petitioner seeks a direction forbearing the respondents to declare unenforceable any price over and above the FRP, not just for sugar season 2013-14, but even for the years going forward.

13. In 2018, the State has passed the Tamil Nadu Sugarcane (Regulation of Purchase) Act, 2018 (in short '2018 Act'). With this, the petitioner does not pursue any grievance as regards the fixation of SAP. Their grievance is restricted to the period 2013-14 till 2017-18. According to them, there is no justification



whatsoever for the State intervening in matters of pricing over and above the FRP fixed by the Centre.

14. The pricing mechanism is set out under Clause 3 of the Control Order. There is difference in the pricing mechanism pre and post 2008 and 2009 and the variations take note of several economic factors and ground realities that must be taken note of in the fixation of sugar pricing. Pre 2008, clause 5A of the Control Order required the sugar mill to pay the grower, in addition to the minimum price of sugarcane fixed under clause 3, an additional component of cost if found due, in line with the stipulation in the first schedule to the Control Order.

15. Post 2008, the fixation of FRP under Clause 3 was made more expansive bringing within its ambit the value of sugar as well as of by-products, such as bagasse, molasses and pressmud. In light of the more comprehensive pricing mechanism contemplated post 2008, Clause 5A was itself omitted. The petitioner would thus attempt to state that FRP is a comprehensive mechanism and there should be no other levy over and above the same.

16. They also draw attention to the report of a Committee that had been constituted under the Chairmanship of Dr.C.Rangarajan, Former Governor of Reserve Bank of India and Former Chairman of the Economic Advisory

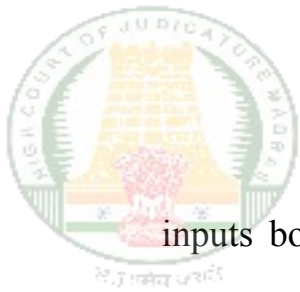


Committee to the Hon'ble Prime Minister of India along with other experts in the field, to study various issues relating to the sugar industry.

17. The report, dated 05.10.2012, recommended dispensing with the obligation of levy on the part of sugar manufacturers as well as any regulation for the free sale of sugar by mills. In effect, it was suggested that a free market come to be, that allowed all stakeholders sufficient flexibility to dictate their costs and generate income in line with dynamic market forces.

18. The recommendation was accepted in part and the levy obligation and release mechanism stood dispensed with. The Committee also recommended sharing of revenue between the mills and the growers at the proportion of 30:70 respectively. Admittedly, the sugar mills were complying with this percentage of revenue sharing, more or less in line with the suggested proportion, till crushing season 2012-13. Thereafter, it is their submission that the market conditions changed drastically, resulting in huge losses being suffered by the petitioner mills. Cash flow was affected and the petitioner mills were simply unable to absorb the demands from various quarters.

19. All parties before me would accede to the factual position as above, and the procedure that was being followed till crushing season 2012-13. Prior to announcement of the SAP, the respondents were in the practice of obtaining



inputs both from the petitioner mills as well as the growers and fix prices that were mutually acceptable to all parties. Thus, and since their concerns, compulsions and points of view were taken note of, all parties appear to have complied with the pricing requirements for a while.

20. Trading and commerce in Sugar falls under Entry 33 of List III entitling both the Centre and the State to concurrently legislate in this regard. What has been fixed by the Centre is the FRP. According to the petitioner, while the entitlement of the State to legislate in this regard cannot be questioned, any such levy would have to be based on a Statute enacted for that purpose.

21. Since the State has chosen to legislate on regulation of price of sugarcane only in 2018, there can be no imposition of a State levy prior to that date. This is the substratum of the petitioner's argument. They have referred to the judgments of the Hon'ble Supreme Court in the case of *State of Tamil Nadu V. Kothari Sugars and Chemicals Limited*¹, *U.P Cooperative Cane Unions Federations V. West U.P.Sugar Mills Association*², *West Uttar Pradesh Sugar Mills Association V. State of U.P. (1)*³ and *West Uttar Pradesh Sugar Mills Association V. State of U.P. (2)*⁴

¹ (1996) 7 SCC 751

² (2004) 5 SCC 430

³ (2012) 2 SCC 773

⁴ (2020) 9 SCC 548



22. In the case of *U.P. Cooperative Cane Unions Federations*², a Constitutional Bench of the Hon'ble Supreme Court heard the appeals filed by several States including Tamil Nadu. The majority judgment deals with, at paragraphs 54 and 55 thereof, the cases of this very petitioner. The Court observes that the State of Tamil Nadu, as on that date, had not enacted any Statute regulating the purchase and supply of sugarcane.

23. The concession made by the State in the counter affidavit was also recorded, to the effect that the fixing of SAP was not pursuant to any statutory power. The State went further to confirm on affidavit that no unilateral announcement would be made of SAP but that the past practice of consultation with the sugar mill owners and growers would be followed. Their views would be taken note of and they would be persuaded to come to an agreement on the SAP. The State thus viewed itself as a facilitating platform to bring together and resolve the on-going and perennial conflict between the mills and the growers in regard to pricing.

24. Paragraphs 54 and 55 read as follows:

“54. South Indian Sugar Mills Association, Tamil Nadu filed writ petition praying that a writ of mandamus or any other appropriate writ, order or direction may be issued forbearing the Government of Tamil Nadu and the Commissioner of Sugar and Cane Commissioner, Chennai, from fixing and announcing or notifying any



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price for sugarcane except the additional price under clause 5-A of the Sugarcane (Control) Order, 1966, to be paid by the sugar mills in Tamil Nadu to the sugarcane-growers for the sugar season 1999-2000. The writ petitions were transferred to this Court and were heard along with CA No. 460 of 1997.

55. The State of Tamil Nadu has not made any statutory enactment for regulation of supply and purchase of sugarcane. In the counter-affidavit filed on behalf of the respondents it is admitted that the State Government is not fixing State-advised price for sugarcane in exercise of any statutory power. In fact in para 9 of the counter-affidavit it is stated that the State Government will not make any unilateral announcement of State-advised price as apprehended by the petitioner. It is further stated that the Government will follow the past practice of consultation with the sugar mill-owners and cane-growers and only after ascertaining their respective views and making them to come to an agreement on fixation of price, the State-advised price, as an agreed price, will be recommended by the State Government. In view of the fact that there is no statutory enactment regarding regulation of supply and purchase of sugarcane, it is obvious that the State Government has no power to fix the price of sugarcane. However, it is always open for the sugar mills to enter into agreements with the sugarcane-growers to purchase sugarcane at a price higher than the statutory minimum price fixed by the Central Government. The transfer petitions are accordingly disposed of in the aforesaid terms.”

25. The march of the law in this regard assumes some relevance. Three judges of the Hon’ble Supreme Court while deciding the *West Uttar Pradesh Sugar Mills Association (I)*³ case had expressed the opinion that there was a conflict between the law laid down in the cases of *U.P. Cooperative Cane Unions*



*Federations*² and *Tika Ramji V. State of U.P.*⁵ and a reference was sought to a

Larger Bench, preferably of 7 Judges, of the following five questions:

“The following questions arose consideration before this five-Judge Bench:

(1) Whether by virtue of Article 246 read with Schedule VII List III Entry 33 of the Constitution the field is occupied by the Central legislation and hence the Central Government has the exclusive power to fix the price of sugarcane?

(2) Whether Section 16 or any other provision of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 confers any power upon the State Government to fix the price at which sugarcane can be bought or sold?

(3) If the answer to this question is in the affirmative, then whether Section 16 or the said provision of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 is repugnant to Section 3(2)(c) of the Essential Commodities Act, 1955 and Clause 3 of the Sugarcane (Control) Order, 1966? And if so, the provisions of the Central enactments will prevail over the provisions of the State enactment and the State enactment to that extent would be void under Article 254 of the Constitution?

(4) Whether SAP fixed by the State Government in exercise of powers under Section 16 of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 is without any application of mind or rational basis and is therefore, invalid and illegal?

(5) Does the State Advised Price (SAP) constitute a statutory fixation of price? If so, is it within the legislative competence of the State?

(6) Whether the power to fix the price of sugarcane is without any guidelines and suffers from conferment of arbitrary and

⁵ AIR 1956 SC 676



uncanalised power which is violative of Articles 14 and 19(1)(g) of the Constitution?”

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26. In its judgment in *West Uttar Pradesh Sugar Mills Association (2)*⁴, the Apex Court decided ultimately that there was no conflict and that the law declared by the Constitution Bench in the case of *U.P. Cooperative Cane Unions Federations*² was correct and would hold the field. Thus, according to the petitioner, the issue stands decided by the aforesaid judgment.

27. The State draws inspiration from Article 154 of the Constitution of India to justify the impugned levy. According to the State, it is unnecessary for any further Statute to have been passed, authorizing such levy in light of Article 154 that states that the Executive power of the State shall be vested in the Governor, to be exercised by him either directly or through officers subordinate to him, in accordance with the Constitution. Sub-article (2) of Article 154 clarifies that such vesting as provided for in Article 154(1) would not be deemed to transfer to the Governor any functions conferred by any existing law on any authority or to prevent Parliament or the State Legislature from conferring by law, functions on any authority subordinate to the Governor.

28. The State relies upon the following judgments in this context:



1. *Rai Sahib Ram JawayaKapur & Others Vs. State of Punjab*⁶
2. *BishambarDayal Chandra Mohan Vs. State of Uttar Pradesh*⁷
3. *Chandrika Jha Vs State of Bihar & Others*⁸
4. *State of Madhya Pradesh & Others Vs. Dr.Yashwant Trimbak*⁹
and
5. *Essar Steel Limited Vs. Union of India and Others*¹⁰

29. In *Rai Sahib Ram Jawayakapur & Others*⁷, 5 Judges of the Apex Court considered a challenge under Article 32 of the Constitution of India in regard to the policy of the Education Department of the Punjab Government that had issued a series of Notifications relating to printing, publication and sale of text books. The petitioners were persons who carried on trade in that very business and the challenge was premised on the ground that the Notifications placed unwarranted restrictions on their right to carry on business.

30. Article 162 relating to Executive power of a State was taken note of by the Bench to state that such authority was exclusive in relation to matters enumerated under List II of the seventh schedule. Balancing the claim of the petitioners to a fundamental right under Article 19(1)(g) to carry on trade or business with the Executive authority of a State under Article 162, the Court held that the restrictions imposed by the State were justified and warranted.

⁶ (1955) 2 SCR 225

⁷ 1982 (1) SCC 39

⁸ 1984(2) SCC 41

⁹ 1996(2) SCC 305

¹⁰ 2016 (11) SCC 1



There was no fundamental right, the Court said, that was unfettered and that could not be restricted, albeit in a reasonable manner by the State.

31. In *Bishambar Dayal Chandra Mohan*⁸ a similar question was decided in the context of the Essential Commodities Act itself. The Court noted that the Essential Commodities Act set out a ‘law’ within the meaning of Article 302 of the Constitution, which imposes reasonable restrictions on the right to carry on trade and commerce.

32. In that case, the State of U.P. had conveyed certain instructions by way of tele-printer messages relating to the control orders issued by the State and it was those instructions that were challenged. The instructions related to various conditions of purchase, sale and storage of food grains, the requirement of furnishing of information relating to the business to assist at all reasonable time the Enforcement Officer or the Licensing authorities for inspection of stocks, the regulation of stocking limits and the powers to seize excess stock.

33. At paragraph 32 of the SCC report, the question that was crystallized for decision was whether the seizure of wheat was with the authority of law. In that context, the Court tested the fundamental right to carry on trade or business guaranteed under Article 19(1)(g) against the power of the State to regulate trade, holding that fundamental right does not mean freedom from law or



regulation but was subject to reasonable restrictions. In fine, the restrictions imposed by the State were held to be reasonable.

34. These cases do not advance the argument of the official respondents, since the question of pricing was not at issue. The specific question that arises in the present matter relates to whether the State has the authority to fix any component of price over and above FRP fixed by the Centre and this issue has not come up for discussion or decision in either of the cases aforesaid.

35. In the case of *Chandrika Jha*⁹ too, the question that came up for decision was different. The controversy related to whether it was legal and proper for the Chief Minister of a State to issue directions that amounted to interference with the working of a statutory functionary.

36. Elaborating on the nature of the executive power that vested in the Governor under Article 154, the Court noted that such executive power connotes the residual or Governmental functions that remained after legislative and judicial functions were taken away, such power included carrying out of acts necessary for supervision or general administration of the State. However, under the guise of such executive power, the State cannot go against the provisions of the Constitution or any law.



37. This observation at paragraph 12 of the SCC report would go against the grain of the impugned orders, seeing as the levy of SAP does not have any statutory sanction till the 2018 Act was passed. The fact that the power to regulate falls in the concurrent list would not, by itself, grant authority to the State to impose additional pricing without the backing of a law in this regard.

38. The State has also relied upon the judgment in *Bharat Coking Coal Ltd. V. State of Bihar*¹¹, wherein at paragraph 19, the Hon'ble Supreme Court has held as follows:

“19.....Thus, the executive power of the State Government is co-extensive with the legislative power of the State legislature. If the State legislature has power to enact laws on a matter enumerated in the State List or in the Concurrent List the State has executive power to deal with those matters subject to other provisions of the Constitution. If a subject matter falls within the legislative competence of State legislature, the exercise of executive power by the State Government is not confined, as even in the absence of a law being made, the State Government is competent to deal with the subject matter in exercise of its executive power.”

39. In that case, the power in question related to the law regulating mines and minerals formulated by the State in the absence of any Rule made by the Central Government to regulate disposal and collection of slurry. It was in that context that the Hon'ble Supreme Court held that the executive power of the State

¹¹ (1990) 4 SCC 557



was co-extensive with legislative power of the State on matters enumerated in the State or concurrent list.

40. In the present case, comprehensive Rules and Regulations have been framed by the Centre relating to pricing. Thus, while it is well within the domain of the State to add one more component to the pricing, such addition can only be with the support of a law and not by way of an executive order. It is a fact that the levy of SAP is only in 2018 by the passing of Tamil Nadu Sugarcane (Regulation of Purchase Price) Act, 2018, authorizing such levy. Had it been unnecessary for such statutory sanction, the question that would then arise would be why at all it was felt necessary for the State to have enacted the 2018 Act.

41. The judgment of the Hon'ble Supreme Court in the case of *State of Madhya Pradesh and another V. Thakur Bharat Singh*¹² assumes importance in this regard. Paragraphs 6 and 7, wherein the judgment in *Rai Sahib Ram Jawayakapur & Others*⁷ has been distinguished, reads thus:

6. Counsel for the State relied upon the terms of Article 162 of the Constitution, and the decision of this Court in Rai Sahib Ram Jawaya Kapur v. The State of Punjab(l) in support of the contention that it is open to the State to issue executive orders even if there is no legislation in support thereof provided the State could legislate on the subject in respect of which action is taken. Article 162 provides that subject to the provisions of the Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature

¹² AIR 1967 SC 1170



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of the State has power to make laws. But Article 162 and Article 73 are concerned primarily with the distribution of executive power between the Union on the one hand and the States on the other and not with the validity of its exercise. Counsel for the State however strongly relied upon the observations of Mukherjea, C. J., in Rai Sahib Ram Jawaya Kapur's case:

"They do not mean, that it is only when the Parliament or the State Legislature has legislated on certain items appertaining to their respective lists, that the Union or the State executive, as the case may be, can proceed to function in respect to them. On the other hand, the language of Article 162 clearly indicates that the powers of the State executive do extend to matters upon which the State Legislature is competent to legislate and are not confined to matters over which legislation has been passed already."

These observations must be read in the light of the facts of the case. The executive action which was upheld in that case was, it is true, not supported by legislation, but it did not operate to the prejudice of any citizen. In the State of Punjab prior to 1950 the text-books used in recognized schools were prepared by private publishers and they were submitted for approval of the Government. In 1950 the State Government published text books in certain subjects, and in other subjects the State Government approved text-books submitted by publishers and authors. In 1952 a notification was issued by the Government inviting only "authors and others" to submit text-books for approval by the Government. Under agreements with the authors and others the copyright in the text-books vested absolutely in the State and the authors and others received royalty on the sale of those text-books. The petitioners - a firm carrying on the business of preparing, printing, publishing and selling text books - then moved this Court under Article 32 of the Constitution praying for writs of mandamus directing the Punjab Government to withdraw the notifications of 1950 and 1952 on the ground that they contravened the fundamental rights of the petitioners guaranteed under the Constitution. It was held by this Court that the action of the Government did not amount to



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infraction of the guarantee under Article 19(1)(g) of the Constitution, since no fundamental rights of the petitioners were violated by the notifications and the acts of the executive Government done in furtherance of their policy of nationalisation of text-books for students. It is true that the dispute arose before the Constitution (seventh Amendment) Act, 1956, amending, inter alia, Article 298 was enacted, and there was no legislation authorising the State Government to enter the field of business of printing, publishing and selling text-books. It was contended in support of the petition in Rai Sahib Ram Jawaya's case(1) that without legislative authority the Government of the State could not enter the business of printing, publishing and selling text-books. The Court held that by the action of the Government no rights of the petitioners were infringed, since a mere chance or prospect of having particular customers cannot be said to be a right to property or to any interest or undertaking. It is clear that the State of Punjab had done no act which infringed a right of any citizen: the State had merely entered upon a trading venture. By entering into competition with the citizens, it did not infringe their rights. Viewed in the light of these facts the observations relied upon do not support the contention that the State or its officers may in exercise of executive authority infringe the rights of the citizens merely because the Legislature of the State has the power to legislate in regard to the subject on which the executive order is issued.

7. We are therefore of the view that the order made by the State in exercise of the authority conferred by Section 3(1)(b) of the Madhya Pradesh Public Security Act 25 of 1959 was invalid and for the acts done to the prejudice of the respondent after the declaration of emergency under Article 352 no immunity from the process of the Court could be claimed under Article 358 of the Constitution, since the Order was not supported by any valid legislation.

42. In light of the discussion as above, I am of the considered view that it is only with the enactment of the Tamil Nadu Sugarcane (Regulation of Purchase Price) Act, 2018 that the State has the entitlement and statutory basis to levy an



Advisory Price over and above the minimum price fixed by the Central Act. The impugned G.O. dated 24.12.2013 and the consequent letter dated 08.01.2014 are set aside.

43. What assumes relevance is the undertaking that has been given by the State before the Hon'ble Supreme Court as recorded in paragraph 55 of the judgment in *U.P.Cane Federations*, extracted in paragraph 26 above. The Apex Court has recorded the absence of a statutory enactment regarding regulation of supply and purchase of sugarcane rendering it obvious that in such circumstances, the State has no power to fix the price of sugarcane and leaving only the avenue of negotiation available.

44. It was left open for the Mills to enter into agreements with the sugarcane growers to purchase sugarcane at a price higher than the statutory minimum price fixed by the Central Government. Thus, this is the only route by which there could have been any additional quantum of price fixation possible. The official respondents were asked to produce material in support of their contention that the impugned recommendation was made after hearing the parties.

45. Compilation dated 23.01.2023 has been filed by the State. Document at S.Nos.1, 6 and 8 are dated 19.09.2005, 06.12.2006 and 14.11.2007. These are extract of the Minutes of the Cabinet Meeting held on 16.09.2005 and



subsequently. A perusal of these minutes shows that all parties were heard prior to fixation of SAP. Press releases and Government Orders recommending those prices have been duly honoured by the sugar mills for all years till 2012-13 as the prices had been fixed, taking note, or at least hearing, their concerns.

46. The additional typed set also contains a copy of the minutes of the meeting of the tripartite dated 14.11.2007 comprising i) Representatives of the Cane Growers Association, ii) Owners of the private sugarmills and iii) Officers of the Agriculture and Sugarcane Departments and a copy of the Agenda notes of Tripartite meeting on 22.09.2009.

47. The copy of minutes dated 14.11.2007 is not signed by any of the parties said to have participated in the meeting. The minutes are an enclosure to letter dated 11.12.2009 and hence are taken to be part of the record. Though Agenda notes of Tripartite Meeting proposed on 22.09.2009 are available, no minutes of the Tripartite have been placed before me, leading to the inevitable conclusion that there has been no meeting.

48. The procedure followed till 2007 are evidently a consequence of the observations of the Hon'ble Supreme Court in the 2004 judgment in the case of *U.P. Cooperative Cane Unions Federations*² and hence the State was well aware of the necessity and propriety of following the same. However, it is relevant to



note that though compilation dated 23.01.2023 contains 40 documents between pages 1 and 158, apart from the documents at serial numbers 8 and 12, being Minutes dated 14.11.2007 and Agenda notes dated 22.09.2009 respectively, there is no indication that any Tripartite meeting has been conducted after 14.11.2007 till date. The State has been issuing Government Orders and Press releases frequently, but in the absence of a Tripartite meet, this Court does not accord any importance to the same.

49. Passionate pleas have been made on behalf of the private respondents emphasizing the abject necessity to sustain the impugned levy. It has been submitted that 2,50,000 families of cane growers would be hard pressed to sustain their livelihood. Mr.Prasad presses into service the statement of Sir Ivor Jennings that the Rule of Law is an 'unruly horse' and must be equated with democracy such that the interests of the cane growers be uppermost in my mind in deciding the issue.

50. Their plea is to the conscience. They urge that regulation of sugarcane is itself completely unnecessary. According to them, the Sugarcane (Control) Order 1966 only benefits sugar factories as it imposes a restriction upon supply of sugarcane at will, and forces the farmers to supply to particular factories only. The Ryots are registered with the sugar mill concerned and are assigned a number.



Such restrictions, according to them, impinge on their constitutional rights analogous to owning the land. Since the owners of the sugar factories are from a different economic strata, it is essentially the farmers who are trampled in sugarcane farming.

51. R4, in paragraph 12 of his counter refers to the Tripartite comprising State representatives as well as representatives of Sugar Factories and Cane growers. That paragraph is revealing, since R4 fairly has stated that this practice of negotiation involving all parties has been done away with ever since 2011. Paragraph 12 reads as follows:

12) Actually, every year, soon after the Central Government fixes the 'price' the State Government used to convene a meeting inviting representatives of Sugar Factories and cane growers. The Agriculture Minister and special invitees used to be present. After consulting all persons concerned, the State Government used to fix SAP. This was accepted by the Factories and the ryots. However, ever since 2011, this practice of convening meeting has been done away with. The State Government has been fixing a price on its own. This fixation of price is issued as G.O.

52. This aligns with the documentation that has been produced by the State, wherein also, there is nothing to indicate negotiation between all parties in fixation of a mutually agreed price between the cane growers and sugar factories over and above the statutory minimum price.



53. R4 and R5 have also repeatedly drawn attention to the admitted fact that the sugar factories have, in fact, been paying the State fixed Advisory Price from time to time, perhaps even regularly, for several years. Thus the present attempt to slip out of this responsibility must not be encouraged, they pray.

54. However, the petitioner would point out that such compliance was only in a spirit of acquiescence and facilitation and not because there was any statutory duty that required them to do so. With the phenomenal financial crunch that they face from 2013, it has become an impossibility for them to honour the SAP. Quite apart from their inability to remit the SAP, the position in law is in their favour.

55. Prior to 2018, it was incumbent upon the State to have, in line with the observations at paragraph 55 of the judgment in *U.P.Cane Federations*, called for a Tripartite meet. Tamil Nadu being a welfare State cannot shy away from the responsibility of involving the cane growers and facilitating a platform where they can vent their grievances before the sugar mills, in anticipation that they would be viewed and perhaps and hopefully, addressed sympathetically. After all, needless to say, it is only the State that could have ensured a common meeting ground between the sugar mills and the farmers to ensure a fair bargain to both the parties.

56. Thus there is a direction to R1 and R2 to conjointly fix a date, call for the attendance of the representatives of Sugar Mills as well as the cane growers



and facilitate negotiations in the proper spirit, in anticipation of finding an amicable resolution in the matter. This exercise must be initiated forthwith and completed within twelve (12) weeks from today. Let a report of compliance be filed with the Registry in this regard by the official respondents.

57. With this direction, this Writ Petition stands disposed. No costs. Connected Miscellaneous Petitions are closed.

01.06.2023

Index: Yes/No

Speaking order/Non Speaking Order

Neutral Citation: Yes/No

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To

1. The Agricultural Production Commissioner
And Principal Secretary to Government,
State of Tamil Nadu, Agriculture Department,
Secretariat, Fort St. George, Chennai – 600 009.
2. The Director of Sugar,
690, Anna Salai, Nandanam, Chennai – 600 035.
3. The Secretary to Government, The Union of India,
Ministry of Consumer Affairs, Food and Public Distribution,
Department of Food and Public Distribution,
Krishi Bhavan, New Delhi – 110 114.



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W.P. No.28620



DR. ANITA SUMANTH, J.

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W.P. No.28620 of 2014
and MP.Nos.1 & 2 of 2014

01.06.2023