



W.P. Nos.28613 and 28639 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.11.2024

Pronounced on : 06.12.2024

CORAM : JUSTICE N.SESHASAYEE

W.P. Nos.28613 and 28639 of 2022
and WMP.Nos.27892, 27893 & 27894.

W.P.No.28613 of 2022 :

Pugalur Sugar Factory
Cane Grower Association (Regn.No.99/2013)
(Formerly known as Erode District Pugalur
Sugar Factory Cane Growers Association)
Rep by its Secretary Mr.Namasivayam
Kandasampalayam P.O.,
Kodumudi Taluk
Erode District - 638 109.

.... Petitioner

Vs.

- 1.The State of Tamil Nadu
Represented by its Secretary to Government
Agriculture Department
Fort St.George, Chennai - 600 009.
- 2.The Commissioner of Sugar
II Floor, Aavin Illam
3A, Pasumpon Muthuramalinganar Salai
Nandanam, Chennai - 600 035.



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3.M/s.Sakthi Sugars Limited
Aval Poondurai
Poonduraisemur Village
Erode District - 638 115.

4.E.I.D. Parry (India) Limited
Dare House, 234
NSC Bose Road, Parrys Corner
Chennai - 600 001.

5.Arachalur Modakurichi Kodumudi and
Sivagiri Area Cane Farmers Association
(Regn.No.SRG/ERODE/98/2022)
Rep. by its Secretary
No.33/31 Erode Main Road
Vadapalani, Arachalur
Kumarapalayam PO, Modakuruchi Taluk
Erode District - 638 101.

W.P.No.28639 of 2022 :

E.I.D. Parry (India) Limited
Dare House, 234
NSC Bose Road, Parrys Corner
Chennai - 600 001.

.... Petitioner

Vs.

1.The State of Tamil Nadu
Represented by its Secretary to Government
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Fort St.George, Chennai - 600 009.

2.The Commissioner of Sugar
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3.Pugalur Sugar Factory
Cane Grower Association (Regn.No.99/2013)
(Formerly known as Erode District Pugalur
Sugar Factory Cane Growers Association)
Rep by its Secretary Mr.Namasivayam
Kandasampalayam P.O.,
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Erode District - 638 109.

4.M/s.Sakthi Sugars Limited
Poonduraisemur Village
Aval Poondurai, Modakurichi
Erode District - 638 115.

5.Arachalur Modakurichi Kodumudi and
Sivagiri Area Cane Farmers Association
Rep. by its President R.P.Raja
No.33/31 Erode Main Road
Vadapalani, Arachalur
Kumarapalayam PO, Modakuruchi Taluk
Erode District - 638 101.

.... Respondents

[R5 suo motu impleaded vide order dated
11.11.2022 made in WMP.No.29412 of 2022
in W.P.No.28639 of 2022]

PRAYER in W.P.No.28613 of 2022 : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus, calling for the records of the second respondent passed in its order dated 19.10.2022 vide Rc.No.17218/CANE-1/2007 and quash the same and consequently direct the second respondent to permit the petitioner's members and farmers from Arachalur Firka Erode District to continue to supply sugarcane to the fourth respondent.



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PRAYER in W.P.No.28639 of 2022 : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus, calling for the records of the impugned order dated 19.10.2022 bearing Rc.No.17218/CANE-1/2007 passed by the second respondent and quash the same as being wholly arbitrary and illegal and consequently direct the second respondent to ensure that the allotment of Arachalur firka continues with it.

<i>Name of the counsel</i>	<i>Appearing for</i>	
	<i>Party</i>	<i>Case No.</i>
Mr.P.S.Raman, Senior Counsel for M/s.Raman and Associates	Pugalur Sugar Factory	Petitioner in WP.No.28613 of 2022
		3 rd Respondent in WP.No.28639 of 2022
Mr.Satish Parasaran, Senior Counsel and Mr.Rahul Balaji for Mr.Madan Babu	E.I.D Parry (India) Ltd	Petitioner in W.P.No.28639 of 2022
		4 th Respondent in W.P.No.28613 of 2022
Mr.AR.L.Sundaresan, Senior Counsel & Mrs.A.L.Gandhimathi, Senior Counsel Assisted by Mr.Karthik Lakshmanan &Ms.S.Meenkashi	Sakthi Sugars Ltd	3rd Respondent in W.P.No.28613 of 2022
		4th Respondent in W.P.No.28639 of 2022
Mr.A.L.Somayaji, Senior Counsel Assisted by Mr.E.Manoharan	Arachalur Modakurichi Kodumudi & Sivagiri Area Cane Farmers Association	5 th Respondent in both WP.Nos.28613 & 28639 of 2022
Mr.R.Ramanlal, Addl. Advocate General Assisted by Mr.U.Baranidharan, Addl. Govt. Pleader	1.The State Rep. by Secy to Govt Agriculture Dept. 2.The Commissioner of Sugar, Chennai.	1 st & 2 nd Respondent in both WP.Nos.28613 & 28639 of 2022



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COMMON ORDER

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INTRODUCTION

A prelude statement introducing the controversy may be made. If an agriculturist cultivates sugarcane, he cannot choose his market. His market is determined under the Sugarcane Control Order, 1966, which was formulated originally under the Essential Commodities Act, 1955. The Act has since been replaced by the Essential Services Maintenance Act, 1981. Broadly stated, in terms of the Sugarcane Control Order, the *firka* (village or group of villages or a block) where sugarcane is grown is allotted to different sugar factories in the locality by the Cane Commissioner on the recommendation of the Area Delimitation Committee (henceforth ADC, for short) which is required to be constituted in terms of thereof. ADC includes representatives of the stakeholders, and in *Nadippisai Pulavar K.R.Ramasamy Co-operative Sugar Mills Cane Growers Association Vs. Union of India and others* [(2010) 6 MLJ 251], a Division Bench of this Court has held ADC should include representatives of the cane-growers, as they are also a stakeholder.

2. The controversy involved in this case surrounds the legitimacy of the proceedings of the Cane Commissioner dated 19.10.2022, under which he



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had allotted *Arachalur firka*, to M/s.Sakthi Sugars Ltd., which was earlier allotted to Pugalur Sugar Factory. Pugalur Sugar Factory is owned by M/s E.I.D. Parry (India) Ltd., and as to be expected, it laid W.P. No. 28639 of 2022, challenging the order of the Cane Commissioner. Arachalur Firka has thus become a bone of contention between both the sugar factories.

3. What the impugned Order of the Cane Commissioner unwittingly has achieved is to divide the cane growers of *Arachalur firka* into two. They group themselves under the banner of two registered societies. One of the Societies of cane growers calls itself 'Pugalur Sugar Factory Cane Grower Association', (*henceforth would be termed as the Pugalur Society, for short*) and they support E.I.D. Parry. This society separately challenges the aforesaid order of the Cane Commissioner in W.P. No. 28613 of 2022. The other society is 'Arachalur Modakurichi Kodumudi & Sivagiri Area Cane Farmers Association', (*which would be referred to as Modakurichi Society, for narrative convenience*), and they support Sakthi Sugars, and support the very Order of the Cane Commissioner, which the Pugalur Society opposes.



FACTS

4.1 The facts which lead up to the filing of the present case may be bullet pointed:

- (a) Till 16.05.1999, Arachalur firka was unquestionably with E.I.D Parry. And Sakthi Sugars had its own cane area allotted to it. While so, there entered a new entity namely M/s.Tilan International (P) Limited (hereinafter will be referred to as Tilan), with a proposal to commission its sugar manufacturing unit and it applied to the Cane Commissioner for allotment of cane area for its manufacturing purposes.
- (b) This was followed by the Area Delimitation Committee engaging itself in the process of delimitation, and it made its recommendations through the minutes of its meetings dated 17.11.1998 and 20.11.1998.
- (c) This ultimately resulted in the proceedings of the Cane Commissioner dated 16.05.1999. Vide this proceeding, the Cane Commissioner withdrew 8 firkas from the allotment of Sakthi Sugars and Arachalur firka from E.I.D Parry, and allotted them to Tilan, in anticipation that Tilan would commence sugar-production.



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Under the same proceedings, the Cane Commissioner also removed Pettavethalai *firka* which hitherto was allotted to a certain Kaveri Sarkarai Rasayanam Aalai (*hereinafter would be referred to as Kaveri Sugars*), and allotted it to E.I.D. Parry.

- (d) It may thus be stated that E.I.D. Parry, though had lost Arachalur *firka* to Tilan, it gained Pettavethalai *firka* from Kaveri Sugars. E.I.D Parry apparently did not have any qualms over it, but Kaveri Sugars was not happy. It therefore challenged the said Order of the Cane Commissioner, dated 16.05.1999 in W.P.No.15590 of 1999 but eventually withdrew it and hence it came to be dismissed on 22.09.1999. It must however, be stated that this case has little relevance to the ongoing litigation.
- (e) Tilan however, could not commence its production. It would now approach the Cane Commissioner and listed its difficulties, but the Cane Commissioner responded to it with his proceedings dated 08.09.2005, and recalled his earlier order dated 16.05.1999. Whether this Order had the effect of restoring status quo ante as was prior to 16.05.1999 is a point of contention between the parties hereto, and it will be detailed later in this Order.



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(f) Tilan now felt aggrieved and approached this Court with W.P.No.36518 of 2005. This came to be disposed of by this Court vide its order dated 27.02.2006, in which the Court attempted a balancing act between (a) the anxiety of the cane-growers who were required to wait almost infinitely for Tilan to commence production and (b) the anxiety of Tilan to save its investment in the sugar factory. Paragraph 3 of this order sets the tone for what was to follow, and this is extracted hereunder:

“3. In the light of the fact that the sugarcane grower whose lands have been allotted to the Petitioner, cannot be allowed to wait indefinitely for the PETITIONER to commence its operation, the withdrawal of the allotment made by the second Respondent, reallocating such area to other sugar mills cannot be found fault with. At the same time, the Petitioner having taken efforts to establish the sugarcane factory by investing huge sum, cannot be also left in the lurch, if the Petitioner's assurance to commence crushing operation within a period of 12 months would fructified as assured by the Petitioner. In such circumstances, I am of the view that when the re-allotment of the already demarcated sugarcane area of the Petitioner to other sugar mills by the impugned order cannot be disturbed, the petitioner is permitted to



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approach the second Respondent well in advance preferably within a period of 3 months prior to the scheduled date of commencing of crushing operations after setting up of the factory petitioner and when such application is made by the Petitioner the second Respondent shall consider the same favourably and ensure the Petitioner gets the allotment of required sugarcane areas and commence its crushing operation and thereby allow the industry to function from the date of its commencement”

- (g) This order, in effect provided Tilan a window for approaching the Cane Commissioner, three months prior to its anticipated date of commencing production with an outer limit set at 12 months from the date of the Order of the Court, i.e till 27.02.2007. Significantly enough, this Court refused to interfere with the proceedings of the Cane Commissioner dated 08.09.2005 recalling allotment to Tilan.
- (h) Despite this Court coming to the rescue of Tilan, it could not commence its production. It is in this setting, on 27.09.2006 Tilan was taken over by Sakthi Sugars. Be that as it may, Sakthi Sugars had moved the Cane Commissioner with its representations dated 13.03.2005 and 02.05.2007, for re-allotment of the area allotted to Tilan – the first one prior to its acquisition of Tilan and the latter



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one after the said acquisition. Sensing damage to its interest, E.I.D Parry approached this Court with W.P.No.26984 of 2007, for issuance of a Writ of Mandamus, forbearing the Cane Commissioner from allotting Arachalur Firka to Sakthi Sugars. On 13.08.2007, this Court passed an interim order to maintain *status quo*. In this petition a certain '*Erode District Pugalur Sugar Factory Cane Growers Association*' intervened. The Pugalur Society, (which now supports E.I.D Parry) claims that it was formerly known as the '*Erode District Pugalur Sugar Factory Cane Growers Association*'.

- (i) During the subsistence of the interim order of *status quo* passed by this Court in W.P. No. 26984 of 2007, on 18.10.2007, the Cane Commissioner passed, what may be termed as an unharmed order, by which he re-allotted the 8 *firkas* which had been earlier taken from Sakti Sugars for allotment to Tilan (vide the proceedings dated 16.05.1999) back to Sakthi Sugars. Since the order of status quo was in force, the Cane Commissioner was careful enough not to lay its hands on Arachalur *firka*.

5.1 On 26.07.2022, W.P. No.26984 of 2007 came to be disposed of by a



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learned Single Judge of this court. The learned Single Judge directed the Area Delimitation Committee to *de novo* consider the allotment of cane-area, after hearing all the stakeholders, including the sugarcane growers in terms of the Judgement in ***Nadippisai Pulavar K.R.Ramasamy Co-operative Sugar Mills Cane Growers Association Vs. Union of India and others*** [(2010) 6 MLJ 251]. In the context of the ongoing proceedings, the following passages from the above Order are relevant:

“11. The present writ petition was filed with an apprehension that the Area Delimitation Committee is proceeding further to take away the Arichalur Firka of Erode Taluk comprising of nine villages and is proposing to allot it in favour of the other sugar mills. According to the petitioner, this decision cannot be taken without affording an opportunity to the petitioner and without hearing the cane growers, who are supplying the sugar cane for the factory belonging to the petitioner. In view of interim orders passed by this Court, the status quo as it prevailed in the year 2007 continues till date and the supply of sugarcane from the Arichalur Firka continues to be made to the factory belonging to the petitioner.

13. It is clear from the above judgement that before any decision is taken by the Area De-limitation Committee



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to delimit and allot the areas of the existing sugar mills to the other sugar mills, the concerned sugar mill as well as the cane growers will have to be necessarily heard and they must be given an opportunity to put forth their views before any decision is taken by the committee.

14. In the present case, the apprehension of the petitioner is that they are not being given any opportunity and hasty steps are being taken to take away Arichalur firka from the petitioner. The 3rd respondent association which is supplying the sugar cane to the petitioner is also apprehending that such a step is being taken by the respondents without hearing them."

5.2 Sakthi Sugars, however, was not a party to W.P. No. 26984 of 2007, and it now felt aggrieved by the prospects of losing Arachalur, and hence it preferred Review Application No.152 of 2022. The learned Single Judge directed that Sakthi Sugars also be heard by the Area Delimitation Committee.

6. The Area Delimitation Committee, however, was not constituted. Instead, the Cane Commissioner took upon himself the responsibility to make



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necessary allotments. As required in the order in WP.No.26984 of 2007, he issued notices to all the stakeholders, including Sakthi Sugars. This Court is informed that it was between the date of Order in W.P.No.26984 of 2007 and the order in the Rev.A.152 of 2022, the 'Modakurichi Society' came into existence. (There is some dispute over this fact, but it is not very germane to the ongoing controversy). The Cane Commissioner however, did not fail to invite them to participate in the hearing that he had with the stakeholders. Eventually he came out with his proceedings dated 19.10.2022. As outlined in the opening paragraphs, the Cane Commissioner pulled out Arachalur *firka* from E.I.D Parry, and allotted it to Sakthi Sugars. His reasons are:

“8. Regarding the Proximity of Both the Sugar Mills, the average distance from Arachalur Firka, Erode District to M/s E.I.D Parry (India) Ltd, Pugalur is around 35 to 40 KM and M/s Sakthi Sugars Ltd., Poondurai Semur is around 10 to 15 KM. Though the entire transport cost may be borne by the sugar Mills concerned, the issues related to time loss, fuel loss and pollution caused due to extra distance to be covered to reach E.I.D Parry (India) Ltd., Pugalur cannot be over looked.”

This proceedings of the Cane Commissioner is now under challenge.



ARGUMENTS

(a) Arguments for Petitioners

7. Heard Thiru Satish Parasaran, Senior Counsel along with Thiru. Rahul Balaji, for E.I.D.Parry and Thiru P.S.Raman, Senior Counsel for Pugalur Society. They jointly attacked the legitimacy of the Order of the Cane Commissioner and they are bullet-pointed below:

- a) Under Regulation 6(a) of the Sugarcane (Control) Order, 1966, the Central Government may vide notification reserve any area where sugarcane is grown for a factory having regard to the crushing capacity of the factory. In terms of this Regulations, cane area is not allotted to the company that may own a sugar factory, but it is required to be allotted based on the crushing capacity of sugar factory. Cane Commissioner's approach seems to be guided by the acquisition of Tilan by Sakthi Sugars, and not by the cane requirement of the factory.
- b) The learned single Judge while disposing W.P.No.26984 of 2007 has issued a candid direction to the Area Delimitation Committee, (which in terms of the dictum in *Nadippisai Pulavar K.R.Ramasamy Co-operative Sugar Mills Cane Growers Association Vs Union of India and others* [2010 (6) MLJ 251] should include representatives of cane-growers), and the Cane Commissioner ought not to have rushed to



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decide the issue, but should have waited for the ADC to make its recommendations. By choosing to decide the way he has decided, the Cane Commissioner has either consciously or unwittingly side-stepped the direction of this court, and skipped one stage too early in passing the impugned proceedings. Necessarily its legitimacy cannot be sustained.

- c) Indeed, the Cane Commissioner has relied on the recommendations of the Area Delimitation Committee, dated 07.08.20007, which was dated some 16 years prior to the date on which the Cane Commissioner had passed his impugned proceedings. The tenor of the direction of this Court in W.P. No.26984 of 2007 does not indicate that it has authorised the Cane Commissioner to rely on a 16 year old document, but to form an opinion based on current circumstances.
- d) When in *Nadippisai case* a Division Bench of this Court had declared that the ADC shall comprise of representatives of cane growers recognising their role as stakeholders, any proceedings passed without the farmers' representative joining the hearing is per se bad in law. Indeed, the judgment in *K.R.Ramaswamy Cooperative Sugar Mills case* was delivered in 2010, at least three years after the earlier report



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of the ADC in 2007. On the face of the dictum in *Nadippisai case*, the said Report of the year 2007 has zero value to merit consideration since in that ADC there were no farmers' representatives. The proceedings of the Cane Commissioner therefore, is per se illegal.

- e) To the notice issued by the Cane Commissioner on 19.10.2022, while Pugalur society has given a 10 page representation to the Cane Commissioner, E.I.D. Parry on its part has given two sets of representations at two different points of time, the impugned proceedings of the Cane Commissioner merely acknowledges their receipt, but does not indicate that the authority has applied his mind to those representations.
- f) The nature of the business demands that the cane growers are cared well to prevent their migration to other crops and to secure the supply of sugarcane. This is emphasised in Dr.C.Rangarajan's Committee report, which the Supreme Court has taken note of in *Swami Samath Sugars & Agro Industries Ltd., Vs Loknete Marutrao Ghule Patil Dnyaneshwar Sahakari Sakhar Karhana Ltd.*, [2022 SCC Online SC 871]. True to the spirit of caring the cane-farmers, E.I.D. Parry has been investing in and expanding the cane cultivation in Arachalur firka



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and helped developing 4,000 acres out of 6,000 acres of Arachalur firka (about 2/3rd of the total extent). Indeed, when Arachalur was drafted out of E.I.D Parry for its allocation to Tilan, the cane farmers of the *firka* were stuck there between 1999 and 2005, during which none cared them except E.I.D. Parry.

g) The cane growers of Arachalur firka had a comfortable journey supplying cane to E.I.D Parry since it established its unit in 1938. Nearly 35% of its cane comes from Arachalur Firka to support its crushing capacity of 5,000 TCD per day. And, E.I.D Parry has an excellent track record of paying all the dues to the cane growers. This is borne out by the statement issued by the Cane Commissioner between 2014 to 2022.

h) There are at least three fundamental flaws in the reasoning of the Cane Commissioner in allocating Arachalur Firka to Sakthi Sugars:

- the Commissioner says that Arachalur supplies only 30% of E.I.D. Parry's cane requirement, whereas its contribution is 35%. The reduction given is arbitrary and artificial.
- while the crushing capacity of E.I.D. Parry is 5000 TCD a day, the cane commissioner gives a convenient and artificial discount of 20% and says that crushing capacity is 4000 TCD; and



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➤ there is an unnecessary emphasis on the distance between Arachallur and E.I.D. Parry's Pugalur unit, when under Regulation 6 of the Sugarcane (Control) Order, 1966, geographical distance is not a criterion while allocating the cane-area to the sugar factories. The Cane Commissioner appears to show an attitude and aptitude to go for irrelevancies in preference to what is contemplated to be done under the Sugarcane (Control) Order.

i) In this backdrop, the proceedings of the Cane Commissioner dated 19.10.2022 cannot be sustained for the following reasons :

- i. it ignored the state of affairs as was on 26.07.2022, the date on which W.P.No.26984 of 2007 was disposed of;
- ii. it ignored the direction given by the learned Single Judge in that Order that the Cane Commissioner should place the matter before the ADC for *denovo* consideration of the application of Sakthi Sugars.
- iii. the Cane Commissioner ought not to have ignored G.O.Ms.No.386, Agriculture (S1) Department, dated 28.09.2007, and should have considered that the cane



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growers are stakeholders and have a say in the matter of delimitation of cane area. This is overlooked.

- iv. The impugned Order passed by the cane commissioner is uninformed, arbitrary, and has emerged as a product of non-application of mind and violates the Order in W.P.26984 of 2007 in the best possible way.

(b) Arguments for Sakthi Sugars and Modakurichi Society:

8. Appearing for M/s.Sakthi Sugars in W.P. No.28639 of 2022, Mr.A.R.L.Sundaresan, learned senior counsel made the following submissions:

- a) There never was an issue till Tilan came into the scene with its proposed project to start a sugar factory. And, there is no dispute about the proceedings of the Cane Commissioner, dated 16.05.1999, making allotment to Tilan. When Tilan could not commence the business, the Cane Commissioner issued a show-cause notice as to why the cane area allotted to Tilan should not be withdrawn. This matter was placed before the 22nd and 27th Area Delimitation Committee (ADC) for consideration. The ADC would now recommend to the Government for withdrawal of the



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demarcated area and their re-allotment to the parent sugar mills, and it resulted in the proceedings of the Cane Commissioner, dated 08.09.2005. This proceedings was overshadowed by the Order of this Court in W.P. No.36518 of 2005, which Tilan had filed, where this Court opened a window for Tilan to apply for re-allotment if it could commence production within 12 months from the date of the order. Therefore, the proceedings of the Cane Commissioner dated 08.09.2005 did not shut the door for Tilan which implied that notwithstanding the fact the Court in W.P. No.36518 of 2005 did not set aside the said Order, it still managed to keep its operation in abeyance.

- b) When on 27.09.2006, Sakthi Sugars took over Tilan, it required cane area for the new unit that it had acquired. It therefore, moved the Cane Commissioner for re-allotment of those areas which were originally allotted to Tilan. A decision indeed was taken by the Cane Commissioner vide his proceedings dated 07.08.2007, but it was done only following a hearing on the issue by the ADC in terms of the Sugarcane (Control) Order. However, this decision of the Cane Commission re-allotting the area which was originally allotted to



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Tilan to Sakthi Sugars could only be partially effected since an order of status quo was passed by this Court in W.P. No.26984 of 2007.

What is now attempted by the Cane Commissioner which is now impugned by the petitioners is to give effect to the re-allotment which was originally recommended by the ADC vide its proceedings dated 07.08.2007. To state it differently, the Cane Commissioner had only done what has already been considered by the ADC, and the accusation that he had passed his proceedings dated 19.10.2022, ignoring the ADC is far-fetched. And, he had also given a hearing to all the stakeholders. What is there now to accuse?

- c) When Arachalur was carved out of E.I.D. Parry's allotment and diverted to Tilan, the former did not have an issue. Now what was handed over to Sakthi Sugars was only the very area which was allotted to Tilan, which should necessarily be given to Sakthi Sugars in view of its takeover of Tilan. In the impugned proceedings, the Cane Commissioner adequately captures this state of affairs.
- d) The petitioner has been heard by the ADC in 2007. It has also heard the cane-growers of the Erode District Pugalur Sugar Factory Cane Growers Association. Now, the Cane Commissioner had



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heard all the stakeholders, and had given effect to the earlier decision of the ADC made in 2007. Indeed, the Cane Commissioner has chosen to compensate E.I.D Parry for the loss of Arachalur, when he allotted a cane area in Karur District to it.

- e) The allotment of cane area is relatable to a sugar factory. So far as this is concerned, even in 1999, a decision indeed has been taken to allot Arachalur firka to the proposed factory of Tilan, and it was done without hearing E.I.D Parry and it did not object to it either. E.I.D Parry was then compensated with cane area of Pettavethalai which was then with Kaveri Sugars, and now with another area in Karur district. Now, when Tilan was acquired by Sakthi sugars, this new unit required cane area. That precisely what Sakthi Sugars had done when it approached the Cane Commissioner with request for allotment of cane area that was allotted to Tilan. Is it not logical that what was allotted to Tilan should come to the one who had acquired Tilan? Indeed, E.I.D Parry had addressed a back to back communication in July and August, 2007, to the Cane Commissioner wherein it had indicated that another sugar factory of Sakthi Sugars was coming up close to Arachalur firka. It had the



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knowledge about this acquisition even when it laid W.P.No.26984 of 2007, yet it chose not to implead Sakthi Sugars. When new cane area is required for a new factory which Shathi Sugars had acquired, the 35th Area Delimitation Committee took note of it, and gave its recommendations on 07.08.2007, which was identical to the allotment made to Tilan on 16.05.1999.

- f) The mere fact that E.I.D Parry enjoyed Arachalur *firka* pursuant to the order of interim stay can never go to its advantage, since but for that order that area would have gone to the new unit acquired by Sakthi Sugars. It is not E.I.D Parry Vs Sakthi Sugars, but it is all about the new unit getting its cane area. And, it must be underscored, the Cane Commissioner has a statutory duty to provide cane area to any new factory, which falls exclusively in his domain and the Court may not interfere with it.
- g) So far as the alleged crushing capacity of E.I.D Parry is concerned, at all times it was only 4,000 TDC, and only recently it claims that it has industrial licence from the Government of India, for crushing 5,000 TDC a day. But the Pollution Control Board has granted permission only to crush 4,000 TDC per day. As of today, the



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crushing capacity is only 4,000 TDC.

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9. Arguing for the Modakurichi Society, Mr.A.L.Somayaji, the learned senior counsel, submitted:

- a) that the 5th respondent society was formed and registered in 2022 with a membership of 107 cane growers, which today stands at about 250. However, what is significant in the context of the interest of these petitioners is not so much about the number of cane growers when the society came to be registered, but about their respect for the proceedings of the Cane Commissioner which they have to abide.
- b) The case of E.I.D Parry, the petitioner in W.P. No.28613 of 2022 proceeds on the footing that Arachalur firka has at all times stayed with it. This premise makes a mismatch with the facts, since the Cane Commissioner, after passing his proceedings dated 08.09.2005 withdrawing the allotment made to Tilan did not pass any order of re-allotment of the withdrawn area. Indeed, he had made a specific statement that orders regarding re-allotment of cane areas to parent mills will be issued separately. But before any such exercise, Tilan had moved this court in W.P. No.36518 of 2005 and



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that changed the equation. It however, appears from the tenor of the Order in W.P.36518 of 2005, that the learned single Judge appears to have been persuaded to believe that the Cane Commissioner had already re-allotted the areas which were withdrawn by the latter vide his proceedings dated 08.09.2005, when in fact it was not.

- c) Finally E.I.D Parry has increased its capacity to 120.64% in 2021 - 2022 and currently it has increased it to 133.05% whereas Sakthi Sugars is struggling to match its allotted capacity, for want of sugar cane. Currently it operates well under its allotted capacity at 71.53%. E.I.D Parry, in effect is keen to efface other competitors from the market with its over drive.

c) Arguments for the Cane Commissioner:

10. In his submissions Mr.Ramanlal, the learned Additional Advocate General, essentially highlighted the aspects which Sakthi Sugars and Modakurichi Society had made. He submitted that the Cane Commissioner has carefully weighed all the parameters and took into account the interest of all the stakeholders and has not done any injustice to E.I.D Parry as the cane commissioner has merely reallotted that area which was originally allotted to



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Tilan, and the Cane Commissioner has made even the loss of Arachalur to E.I.D Parry by allotting a new cane area in Karur District. No such benefit was extended to Sakthi Sugars.

(d) The Reply:

11. In reply, the Advocates appearing for the petitioners submitted:

- (a) Sakthi Sugars and the Modakurichi Society which backs the former, assume conflicting stands as to the true import of the proceedings of the Cane Commissioner dated 08.09.2005. The contention of Sakthi Sugars is that, on the withdrawal of the allotment made to Tilan, *status quo ante* was restored and the areas allotted to Tilan in 1999 were reallocated to the parent factories. But Modakurichi Society contends that no re-allotment of any kind was made, and the decision on it was deferred by the Cane Commissioner.
- (b) Since Tilan could not commence its production, the whole arrangement contemplated under the proceedings of the Cane Commissioner dated 16.05.1999, was frustrated, more particularly, on account of the limitation as to time stipulated therein.
- (c) The contention that whatever that was allotted to Tilan, by default



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should go to Sakthi Sugars, in view of the takeover of Tilan by Sakthi, is also not tenable. Indeed on 27.09.2006, when Sakthi Sugars took over Tilan, there was no subsisting right in Tilan to retain Arachalur firka.

12. The arguments were long drawn and it touched upon every conceivable angle more on facts than law, and the efforts of the counsel on either side are well appreciated. However, when this Court is required to judicially review the administrative action of the Cane Commissioner in passing his proceedings dated 19.10.2022, any contentious dispute on fact, however significant it may be to the parties, may not go under the scanner of forensic scrutiny.

13. The minimum facts which require to be appreciated for ascertaining the sustainability of the impugned action of the Cane Commissioner. They are now enumerated for understanding the setting:

- a) Before 16.05.1999, the Arachalur Firka, the bone of contention between E.I.D Parry and Sakthi Sugars was with E.I.D Parry. Tilan arrived at the scene and necessarily certain cane area needs to be



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provided for its factories. And this resulted in the Cane Commissioner passing the proceedings dated 16.05.1999. And this proceedings was preceded by a meeting of the ADC, wherein, it *inter alia* decided on principle that Arachalur Firka, which hitherto enjoyed by E.I.D Parry, should be drafted and allotted to Tilan. And E.I.D Parry was compensated with Pettavethalai firka which was then with Kaveri Sugars. And E.I.D Parry did not have an issue over it.

- b) What is significant in the context of the case is that in the ADC meeting that led to the proceedings of the Cane Commissioner dated 16.05.1999, there were no representatives of the cane growers, since it was not specifically provided in the Sugarcane (Control) Order. And it was not until the dictum in ***Nadippisai Pulavar K.R.Ramasamy Co-operative Sugar Mills Cane Growers Association Vs Union of India and others*** [(2010) 6 MLJ 251], the cane growers were never considered to have a say vis-a-vis any decision on delimitation of cane area.
- c) Now, the allotment of cane area made by the Cane Commissioner in his proceedings dated 16.05.1999 apparently was for a proposed



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factory of Tilan. And Tilan never commissioned that unit atleast till 2006, and in 2007, Sakthi Sugars took over Tilan and along with it the factory which Tilan had proposed to commission.

d) But before that could happen, on 08.09.2005, the Cane Commissioner had withdrawn the allotment to Tilan, and this was challenged by Tilan in W.P.No.36518 of 2005. And the Court did not set aside the order of the Cane Commissioner dated 08.09.2005, but only required Tilan to approach the Cane Commissioner for fresh allotment. Indeed, in his very proceedings dated 08.09.2005, the Cane Commissioner had indicated that,

“.... The matter was placed before the 22nd and 27th Area Delimitation Committee for consideration. After a detailed discussion the Area Delimitation Committee recommended to Government for withdrawal of demarcated areas and re-allot to the parent mills from which the areas were originally transferred.”

Therefore, if the proceedings of the Cane Commissioner dated 08.09.2005 is read along with the Order of this Court in W.P.No.36518 of 2005, then the direction of this Court requiring Tilan to approach the Cane Commissioner for fresh allotment was



only logical.

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- e) What it signifies is that the allotment made to Tilan vide proceedings of the Cane Commissioner dated 16.05.1999, was only on paper, and Tilan very obviously could not have enjoyed this allotment since it never commissioned its unit at least for the next seven years. Therefore, what was intended, could not have been carried out at a physical level. The logical conclusion is that both Sakthi Sugars and E.I.D Parry have enjoyed, or should have enjoyed the areas which they were required to cede away to Tilan, and those areas stayed with their respective factories. Indeed, E.I.D Parry posed a critical question: who enjoyed Arachalur firka between 16.05.1999 and 08.09.2005 and thereafter? This question was never answered.
- f) Then arrives the next stage when Sakthi Sugars moved the Cane Commissioner for its allotment. Before the Cane Commissioner could act on it, E.I.D Parry had laid W.P.No.26984 of 2007 and obtained an interim order to preserve the *status quo*. And the Cane Commissioner though passed an order dated 18.10.2007, reallocoting the cane area that was available for allotment, pursuant to his order withdrawing the allotment to Tilan, still the authority did not



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include Arachalur firka in deference to the order of status quo passed by this court. But the proceedings of the Cane Commissioner dated 18.10.2007 shows that even this re-allotment of whatever cane area, was done only after it had gone through the considerations of ADC.

- g) Therefore, Arachalur remained un-allotted. If the illustration (d) of Sec. 114 of Indian Evidence Act, 1872 (Sec. 119 of BSA, 2023) is telescoped to understand the state of affairs, till the contrary is established, it must be presumed that Arachalur firka could have only stayed with E.I.D Parry.
- h) The clock does not stop ticking merely because the Court had passed an order of *status quo* in W.P.No.26984 of 2007. E.I.D Parry claims that in all the years since the proceedings of the Cane Commissioner dated 08.09.2005, it had made huge investments in developing Arachalur firka. While no party has a vested right to any of the cane area allotted to them, one who claims to have made investments in developing the area may have a legitimate expectation of retaining the area, and hence that party should be heard. And that is precisely what this Court has done by the learned



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Single Judge vide his order dated 26.07.2022 passed in W.P.No.26984 of 2007 requiring the parties to go before the ADC, which, to emphasize, should now include the representatives of cane growers.

14. Given the setting, so far as the legality of the impugned order goes, the Cane Commissioner neither has any discretion nor any choice, except laying off his hands from the exercise concerning the allotment of Arachalur firka till such time ADC hears the stakeholders on all aspects. This is not just the direction of the learned Single Judge in W.P.No.26984 of 2007, but also the requirement of Sugarcane (Control) Order. The Cane Commissioner however has ignored both these requirements, and took a leap both over the procedures and the directions of the Court and formed his own independent opinion.

15. It is evident from the proceedings of the Cane Commissioner that he had heard all the stakeholders, and none of the parties here dispute it. It is not about the hearing which the Cane Commissioner might have afforded, but it is all about his authority to bypass ADC. To re-emphasize, he has not only bypassed the statutory provisions in the Sugarcane (Control) Order, but also



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the positive directions of this Court. This Court can hardly accommodate any such action within the levels of its tolerance. Howsoever appreciable the effort of the Cane Commissioner be, howsoever bonafide his intent might be, yet he breached that which he ought not to have breached. After all, when law prescribes how things shall be done, and Court directs how decision must be made, then it should be so done and not in any other mode. Expediency of a decision is subordinated to the prescription of law.

16. Having held thus, this Court hastens to add that in view of the fact that Sakthi Sugars has expanded its manufacturing operations with its acquisition of Tilan's unit, that factory surely requires allotment of cane area. No legitimate entitlement of Sakthi Sugars can be denied to it. In this proceedings, this Court does not address the issue of the entitlement of Sakthi Sugars for allotment of cane area for the factory that it had acquired in 2007, but only with the manner of such allotment. This Court also understands the difficulties which Sakthi Sugars might be negotiating in sustaining the operation of the unit that it had acquired without a defined allotment for over more than 15 years now. True, not all the allotment which has been made under the impugned proceedings is affected by this order, but it is



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underscored, it may, still be without sufficient allotment of cane area. That however, is an issue on facts which the ADC may have to consider. After all there should be factory-centric, fair and equitable allotment of cane area, where every sugar factory grows and prosper, for the fundamental right under Article 19(1)(g) of the Constitution does not encourage monopoly in a legislation-controlled regime. Given the scenario, the suspense and the stalemate on Arachalur firka cannot and should not be let to persist any longer.

17. The conclusion is made simpler by the approach adopted by the Cane Commissioner in coming out with its proceedings dated 19.10.2022. It cannot be sustained in law. This Court, therefore, passes the following order:

- (a) Both W.P.No.28613 of 2022 and W.P.No.28639 of 2022 are allowed and the impugned order in Rc.No.17218/CANE-1/2007 dated 19.10.2022 passed by the second respondent is hereby quashed;
- (b) The first respondent is directed to constitute the Area Delimitation Committee within a period of one month from the date of this order, and all the parties hereto are directed to place their case (on facts



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which are placed before this court) before the Area Delimitation Committee. And the Area Delimitation Committee shall come out with its recommendations within a period of four months from the date on which it is constituted. At any rate, this exercise shall not exceed six months from the date of constitution of Area Delimitation Committee. And the Cane Commissioner would be free to make his decision once the Area Delimitation Committee makes its recommendations.

No costs. Consequently, connected miscellaneous petitions are closed.

06.12.2024

Index : Yes / No

Speaking order : Yes / No

Neutral Citation : Yes / No



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To:

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- 1.The Secretary to Government
State of Tamil Nadu
Agriculture Department
Fort St.George, Chennai - 600 009.
- 2.The Commissioner of Sugar
II Floor, Aavin Illam
3A, Pasumpon Muthuramalinganar Salai
Nandanam, Chennai - 600 035.



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N.SESHASAYEE.J.,

ds

Pre-delivery order in
W.P. Nos.28613 and 28639 of 2022

06.12.2024