

**IN THE HIGH COURT OF JUDICATURE AT
HYDERABAD**

**FOR THE STATE OF TELENGANA AND THE STATE
OF ANDHARA PRADESH**

W.P. No.9376 of 2015

Between:

1. M/s.Oil Palm Developers & Processors Association
and others

.....Petitioners.

and

1. State of Andhra Pradesh,
Rep. by its Principal Secretary to GOAP,
Agriculture & Cooperation Department,
and others.

.....Respondents

Judgment pronounced on : 15-
12-2015

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

1. Whether Reporters of Local
newspapers : --
may be allowed to see the judgments?

2. Whether the copies of judgment may be
marked : **Yes**
to Law Reporters/Journals?

3. Whether their Lordship wish to see the fair copy : --

of the Judgment?

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA

RAO

W.P.No.9376 of 2015

%15-12-2015

#1. M/s.Oil Palm Developers & Processors

Association and others.

Petitioners.

Versus

\$1. 1. State of Andhra Pradesh,
Rep. by its Principal Secretary to GOAP
Agriculture and Cooperation Department
And others.

Respondents.

< **GIST:**

> **HEAD NOTE:**

!Counsel for the petitioners : Sri E.Manohar, learned Senior
Counsel for Sri Challa Gunaranjan

^ Counsel for the respondent-Bank : Sri P.B.Vijay Kumar

^ Counsel for R-1 and R-2 : Government Pleader for
Agriculture.

^ Counsel for R-5 : Sri S.Appadhara Reddy

? **Cases referred**

[1] (1987) 2 S.C.C. 720

2. (1990) 3 S.C.C. 223

3. (1985) 3 SCC 545, at page 569

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA

RAO

W.P.No.9376 of 2015

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ORDER:

Heard Sri E.Manohar, learned Senior Counsel, appearing for Sri Challa Gunaranjan, learned counsel for the petitioners, learned Government Pleader for Agriculture, appearing for respondent Nos.1 and 2 and Sri S.Appadhara Reddy, learned counsel for 5th respondent.

2. The 1st petitioner is an association of oil palm developers and processors. Petitioner Nos.2, 3 and 4 are Companies registered under the Companies Act, 1956 who are oil palm developers and processors and also members of the 1st petitioner-association.

3. In this Writ Petition, they question G.O.Ms.No.2 dt.18-02-2015 issued by the Government of Andhra Pradesh, Agricultural and Cooperation (Horti & Sericulture) Department.

4. Under this G.O.Ms, the State Government had adopted a formula for pricing of oil palm fresh fruit bunches (FFBs) for the oil year from 01-11-2014 to 31-10-2015 in exercise of powers conferred under Section 13 (1) of the Andhra Pradesh Oil Palm (Regulation of Production and Processing) Act, 1993 (for short 'the Act').

5. The said Act was enacted to provide for regulation and cultivation of oil palm for orderly growth and processing thereof and for matters connected therewith. The said Act provides the constitution of a committee called 'the Andhra Pradesh Oil Palm Advisory Committee' to advice the State Government on the following matters set out in Section 4:

- a) *Extension of the areas under cultivation of oil palm;*
- b) *Problems relating to the cultivation of oil palm;*
- c) *Problems faced by the oil palm processing industry;*
- d) *Co-ordination between the oil palm growers and industry and sorting out of all matters which may arise;*
- e) *To bring to the notice of the Government any measures that will suit the orderly development of the oil palm cultivation and industry;*
- f) *Such other matters as may be prescribed.*

6. Section 8 thereof contemplates appointment of an officer as an Oil Palm Commissioner and Section 5 empowers him to declare areas specified in a notification issued by him attached to a processing factory as a zone.

7. Section 10 directs the occupier of the factory, where manufacturing process connected with the processing of oil palm FFB is carried on with the aid of mechanical power, to maintain a register of oil palm growers in the zone attached to the factory.

8. Sub section (2) of Section 11 provides that if a particular area is declared as a factory zone under sub section (1), the oil palm growers in that area shall supply the fresh fruit bunches from the oil palm plantations grown in that area only to the factory to whom the factory zone is attached and to none else. Sub section (3) of Section 11 requires the occupier of the factory in the concerned factory zone declared under that provision to buy all the oil palm FFB produced by all the oil palm growers or their Companies/Societies in that factory zone as are offered for sale by them at a price which shall not be less than the price fixed by the authority empowered to fix the price under this Act. Section 12 provides for consequences of such failure to buy.

9. Section 13 empowers the State Government to fix the minimum price of oil palm FFBs or in the alternative to authorize the oil palm Commissioner to do so, subject to such guidelines as they may give in that regard from time to time.

10. Andhra Pradesh Cooperative Oil Seeds Growers Federation Limited (for short 'AP Oil Fed') is a public sector body having processing units at Pedavegi in West Godavari District and also at Aswaraopet in Khammam District.

11. There is no dispute that after a bifurcation of the erstwhile State of Andhra Pradesh into the State of

Telangana and the residuary State of Andhra Pradesh under the AP Re-Organization Act, 2014 (Central Act 6 of 2014), the AP Oil Fed Unit at Aswaraopet in Khammam District fell in the State of Telangana post 02-06-2014, the notified date under that Act, and the AP Oil Fed Unit at Pedavegi, West Godavari District fell within the residuary State of Andhra Pradesh.

12. Vide G.O.Ms.No.22, Agriculture and Cooperation (Agri.I) Department dt.20-05-2015, AP Oil Fed, which was listed at serial No.45 in IX Schedule to the AP Reorganization Act, 2014 underwent demerger and its Managing Director was requested to take further necessary action for registration of the new entity in the successor States by constituting Board of Directors and apportionment of Assets and Liabilities between the two States as per the approved demerger plan and as per the provisions of the Andhra Pradesh Cooperative Societies Act, 1964.

13. The Department of Agriculture and Cooperation, Union of India had entrusted on 27.2.2011 the responsibility to recommend the formula for pricing FFBs of Oil Palm to the Commission for Agricultural Costs and Prices (CACP), which had a mandate to fix MSP of 24 agricultural commodities. Suggestions were made to the said committee. After obtaining inputs from all the stake holders, CACP submitted a report in January 2012 to 4th

respondent proposing formula for pricing for FFBs.

14. In its report, it recommended that formula for pricing of FFBs be fixed at 13.54% of net Crude Palm Oil (for short 'CPO') weighted average price plus 75.25 % on 9% recovery of palm kernel nuts weighted average price. This was arrived at based on estimated cost of cultivation at 75.25% in the total cost of production of CPO from farm level to factory level and, for the purpose of calculation, Oil Extraction Ratio (for short 'OER') was taken as 18%. The Additional Secretary, Ministry of Agriculture and Cooperation vide letter dt.02-02-2012 sought for the comments of 1st respondent on the recommendations made by CACP.

15. The 2nd respondent forwarded the said report to the petitioners as well as 5th respondent farmers association seeking remarks on recommendations of CACP.

16. Petitioners contend that even though they objected to the recommendations of the CACP, ignoring the said objections, the 1st respondent by letter dt.18-05-2012, informed 4th respondent that the recommendations of CACP were acceptable to the State Government and requested to take appropriate action.

17. The 4th respondent, acting upon the

recommendations of the CACP etc., recommended vide letter F.No.12-22/2010-(TMOP) dt.13.8.2013, the formula for price of FFBs of oil palm at *“13.54% of net CPO weighted average price, based upon 18% Oil Extraction Ratio, plus 75.25% on 9% recovery of Palm Kernel Nuts weighted average price”*. It further stated that any variation in OER would result in change in the pricing formula in respect of percentage of net CPO weighted average price to be paid to the oil palm growers as per the enclosed table at annexure thereto. It further stated *“the OER would be determined as per actual Oil Content Extracted in the past by the processing industry, as established by the State Government concerned.”*

18. Consequently, 1st respondent issued G.O.Ms.No.110 dt.13-12-2013 specifying the formula for pricing of oil palm FFBs as recommended by 4th respondent and this formula was given effect to in Oil Year 2013-14 i.e. from 01-11-2013 till 31-10-2014. This has been challenged by the petitioners in W.P.No.30276 of 2014 and is pending on the file of this Court.

19. For the Oil Year 2014-15, 1st respondent constituted a committee vide G.O.Rt.No.10 dt.05-01-2015 for recommending the Oil Palm FFB pricing formula.

20. Petitioners contend that a meeting was called on

06-01-2015 to hear views of both petitioner as well as members of 5th respondent. They allege that during the meeting, while members of the 5th respondent requested the committee to consider a flat and fixed OER irrespective of what is actually obtained at the AP Oil Fed (Pedavegi) unit, the petitioners requested to take the actual OER as obtained during the year 2013-14 in AP Oil Fed (Pedavegi) mill which is 16.57% stating that this is in line with the CACP report.

21. The Committee however decided in the said meeting that the OER at 17.55% as obtained in AP Oil Fed, at Ashwaraopeta, Telangana State during the Oil Year 2013-14 should be taken into account while fixing the price of Oil Palm FFbs in the residuary State of Andhra Pradesh for Oil Year 2014-15.

22. The petitioners however allege that the suggestion of 1st respondent during the committee meeting to accept the OER at 17.55% as obtained in AP Oil Fed, at Ashwaraopeta, Telangana State was not agreed by the petitioners on the ground that the said plant was situated not in the State of Andhra Pradesh and that the OER of the said plant cannot be the basis for fixing FFB price for the State of Andhra Pradesh when there exists a Government plant within the said State of Andhra Pradesh.

23. This is however disputed by the respondents who allege that the members of 1st petitioner Association, and in particular its representatives, had agreed to the OER of 17.55% as obtained in AP Oil Fed, at Ashwaraopeta, Telangana State as the basis for fixing for FFB price for the State of Andhra Pradesh also.

24. Petitioners contend that alternatively they agreed for an OER of 17.4% obtained in the erstwhile State of Andhra Pradesh for the year 2012-13 as the basis for price fixation for the year 2014-15. They allege that even though they sought for minutes of the meeting which took place on 06-01-2015, the same had not been supplied to them and that they had addressed a letter dt.22-01-2015 to 2nd respondent in regard to the minutes of the meeting which took place on 06-01-2015.

25. However, during the course of hearing in this Writ Petition, the minutes of the meeting which took place on 06-01-2015 were produced by the learned Government Pleader appearing for the respondents which indicated that a decision was taken to fix the price of the Oil Palm FFBs for the oil year 2014-15 to the following effect:

*“13.20 percent of net Crude Palm Oil (CPO) weighted average price (based on the actual, average OER of 17.55% recovered for the oil year 2013-14 by the APOILFED **Aswaraopet** Unit) plus 75.25 percent on 9% recovery of palm kernel*

*nuts weighted average price, realized by
APOILFED.”*

26. The minutes of the meeting indicate that one R.R.Govindan, representing the 3rd petitioner which is a member of the 1st petitioner association, signed on a sheet of paper annexed to the Minutes of the meeting dt.6.1.2015 as having attended the said meeting. His signature is not found on the actual minutes of the meeting dt.6.1.2015 where the signatures of other participants such as (i) Commissioner of Horticulture, (ii) VC & MD, APOILFED, (iii) Secretary, A&C Department and (iv) Hon’ble Minister for Agriculture & Horticulture, Government of Andhra Pradesh are found.

27. Since the said minutes specifically record the demand of the petitioners that OER of Pedavegi unit of APOILFED should be taken into account, it is doubtful to say that members of the 1st petitioner association agreed to the decision by the committee to take into account the OER of the APOILFED, Aswarraopet unit as the basis for fixing the price of Oil Palm FFBs in the State of Andhra Pradesh.

28. Basing on the alleged consensus in the meeting held on 6.1.2015 between the members of 1st petitioner association consisting of Oil Palm Developers and Processors and members of 5th respondent growers

society, the impugned G.O.Ms.No.2 Agr & Cooperation (Hort & Ser.) Dept dt.18.2.2015 was issued fixing the following formula for the pricing of Oil Palm FFBs w.e.f. 1.11.2014 to 31.10.2015 under Sec.13(1) of the Act by 1st respondent:

*“13.20 percent of net Crude Palm Oil (CPO) weighted average price (based on the actual, average OER of 17.55% recovered for the oil year 2013-14 by the APOILFED **Aswaraopet** Unit) plus 75.25 percent on 9% recovery of palm kernel nuts weighted average price, realized by APOILFED.”*

The G.O.Ms further states that the 17.55% OER obtained by the Oil Palm Processing Unit, Aswaraopet of APOILFED during the Oil Year 2013-14 is taken as the basis for fixing the price of the Oil Palm FFBs in the residuary State of Andhra Pradesh is being taken since the APOILFED was not yet bifurcated.

CONTENTIONS OF PETITIONERS

29. Petitioners contend that the impugned G.O.Ms.No.2 dt.18-02-2015 issued by 1st respondent for the oil year 2014-15, taking the OER of 17.55% on the basis of the OER obtained in the AP Oil Fed Oil Palm Processing Unit at Aswaraopet in Telangana State, and applying it post- bifurcation (of the erstwhile composite State of Andhra Pradesh into the State of Telangana and the residuary State of Andhra Pradesh) in the residuary State of Andhra Pradesh while ignoring the OER of

producers and manufacturers of oil palm in the residuary State of Andhra Pradesh (particularly the OER of Oil Palm Processing Unit at Pedavegi in West Godavari District which falls in the residuary State of Andhra Pradesh), is arbitrary, illegal and contrary to the recommendations of the CACP report which had been accepted by the erstwhile Government of Andhra Pradesh by the letter dt.18-05-2012. They point out that in the Lr.No.F.No.12-22/2010-TMOP dt.13.8.2013 received from the Under Secretary of the Govt. of India, Ministry of Agriculture, Dept. of Agriculture and Co-Op, New Delhi specifically directed that “ *The OER would be determined as per actual Oil content Extracted in the past by the processing industry, as established by the State Government concerned*”, and therefore the residuary State of Andhra Pradesh can only take the OER of a Oil Palm Processing Unit located within it’s geographical boundaries and not located in Telangana State. They further contend that the provisions of the Act also have been violated apart from the rights guaranteed to the petitioners under Articles 14 and 19 (1) (g) of the Constitution of India.

30. The principle contention of the petitioners is that the price fixation of oil palm FFBs under Section 13 (1) of the Act could be done by 1st respondent taking into consideration only the relevant factors and inasmuch as the OER of AP Oil Fed Mill at Pedavegi in the State of

Andhra Pradesh was not considered and on the other hand OER of AP Oil Fed, Aswaraopet, Telangana State was considered, contrary to the report of CACP, the impugned G.O. is liable to be struck down on the ground of non-consideration of relevant factors and consideration of irrelevant factors. They contend that 1st respondent, in the impugned G.O., could not have taken 17.55% basing on the OER achieved by the AP Oil Fed unit at Aswaraopet in Telangana State and instead, it should have taken the OER of 16.57% achieved by the AP Oil Fed Mil at Pedavegi in residuary State of Andhra Pradesh while fixing FFB price applicable to the State of Andhra Pradesh. Alternatively they also contended that the 1st respondent, at least should have accepted offer of the petitioners to take the OER at 17.4% obtained by the erstwhile State of Andhra Pradesh for the year 2012-2013 as the basis for price fixation for 2014-15. Petitioners contend that they would incur huge loss if the FFB price, as fixed under the said G.O., is applied since certain costs, which require to be taken into consideration while arriving at formula, were not taken into account and it would force them to close down their units.

31. Sri E.Manohar, learned Senior Counsel, appearing for the petitioners reiterated the above submissions and pointed out that while price fixation is a legislative function and principles of natural justice are not

attracted, formula laid down by 1st respondent for price fixation can still be questioned on the ground that considerations stipulated under relevant law were not taken into account and also on the ground that there is violation of rights guaranteed by Article 14 of the Constitution of India. According to him, once the Government of India through the CACP directed that the OER to be determined as per the actual oil content extracted in the past by the processing industry established by the State Government concerned, after 02-06-2014 (when the erstwhile combined State of Andhra Pradesh was divided into the State of Telangana and the residuary State of Andhra Pradesh), the 1st respondent ought not to have taken into account the OER of the AP Oil Fed plant at Aswaraopet, Khammam District, Telangana State instead of the OER of AP Oil Fed plant at Pedavegi in West Godavari District in the State of Andhra Pradesh for arriving at the minimum price of the oil palm FFBs. He pointed out that as per the CACP report (para 3.11), the OER is a measure of the efficiency of the entire palm oil production process, that it is influenced both by condition of the plantation and the efficiency of the processing mill and the determinants of the OER include climatic parameters, source of planting material, management practices, harvesting standard, method of FFB procurement etc. care and maintenance of machinery, mechanisms to recover oil from waste stems,

control of spillage, proper steam supply and maintenance required temperature in all processing lines etc. He pointed out that the conditions as to climate or soil vary much between the State of Telangana and the State of Andhra Pradesh and when there are several private and public oil palm oil processors in the residuary State of Andhra Pradesh including the AP Oil Fed plant at Pedavegi in Andhra Pradesh, the 1st respondent acted arbitrarily and unreasonably in taking into account the OER of the AP Oil Fed Mill at Aswaraopet in Telangana State. He further contended that even according to the provisions of the Act (Section 11), an oil palm grower in a particular factory zone can only sell to the occupier of the factory in the concerned factory zone and that under Section 12, there is a penalty if this is violated by the occupier of the factory. He therefore contended that the grower of oil palm FFBs is bound to sell only to the occupier of factory in the factory zone and not to anybody outside the zone, and in these circumstances, it is not open to the respondent Nos.1 to 4 to take into account the OER of a processing plant not only not located in the factory zone but also not located within the residuary State of Andhra Pradesh and take into account the OER of AP Oil Fed Unit, Aswaraopet, Telangana State, which falls outside the factory zone and outside the residuary State of Andhra Pradesh. He further contended that merely because the APOILFED was not bifurcated by

date the impugned G.O.Ms No.2 was issued on 18.2.2015 and was only bifurcated later in May, 2015, the 1st respondent cannot take the OER of Aswaraopet Oil Palm Processing Unit in Telangana. He relied upon the decision in **Union of India and Another Vs. Cynamide India Ltd.** and another^[1] in this regard.

CONTENTIONS OF RESPONDENTS

32. The learned Government Pleader on the other hand refuted the above contentions. While admitting that zones were allotted by the Government to the entrepreneurs in the oil palm industry and opportunity was given to them to develop and establish oil palm plantations in the allotted zones, she contended that the oil palm FFBs price fixed under the impugned G.O. cannot be assailed since it was done strictly in accordance with Section 13 of the Act. She contended that the fixation of the oil palm FFB price formula is in accordance with the recommendation of the Commission for Agriculture Costs and Prices (CACP) to whom the Government of India has entrusted the responsibility recommending the formula for pricing of FFBs of oil palm. It was denied that there was any arbitrariness or unreasonableness in fixing the oil palm FFBs pricing formula under the impugned G.O.

33. She contended that the OER, as per the letter dt.13-08-2013 by the Under Secretary,

Government of India, Ministry of Agriculture, Agriculture and Cooperation Department, was to be determined as per the actual oil content extracted in the past by the processing centre as established by the State Government concerned. She relied upon the decision alleged to have been taken in the meeting held on 06-01-2015 between members of the petitioner Association, members of the 5th respondent and the Hon'ble Minister for Agriculture and Horti Culture and stated that only after consensus on the issue , it was decided to take 17.55% OER obtained by the oil palm processing unit, Aswaraopet, AP Oil Fed during the year 2013-14 as basis for price fixation. She further contended that the minutes of the meeting held on 06-01-2015 having been signed by the representatives of the petitioners association, the petitioners are estopped from questioning the decision taken in the said meeting to adopt the OER of 17.55% of the AP Oil Palm Processing Unit at Aswaraopet for the oil year 2013-14. The learned Government Pleader further justified this by saying that the APOILFED organization had not been bifurcated formally by the time the impugned G.O. was issued in February,2015 and the said bifurcation took place subsequently Vide G.O.Ms.No.22, Agriculture and Cooperation (Agri-I) Department dt.20-05-2015. She contended that all the views and contentions of the petitioners as well as 5th respondent members were taken into consideration. She

denied that without application of mind, 4th respondent's recommendation was accepted by 1st respondent and the impugned G.O. was issued.

34. Sri S.Appadhara Reddy, learned counsel for 5th respondent stated that the AP Oil Fed Processing Unit at Aswaraopet in Khammam District in the State of Telangana in the United State of Andhra Pradesh has the latest equipment, that the said equipment was not there in the unit of Pedavegi and the respondents had therefore taken OER of the AP Oil Fed Unit at Aswaraopet since the said unit was not bifurcated at the time of issuance of the G.O. It was also contended that the formula adopted by 1st respondent is not beneficial to the farmers but they were forced to accept the price fixed by the Government even though it is to their disadvantage. It is contended that farmers have no other alternative except to offer FFBs to the petitioners units as per the rate fixed by the Government, that the price of oil palm FFBs is not constant and keeps changing from month to month and it causes loss to the farmers. He relied upon the judgment in **Shri Sitaram Sugar Company Limited and another Vs. Union of India and others** ^[2] and contended that the price fixation is in the nature of exercise of legislative power and that the Court cannot substitute it's view to that of the Legislature since it is not concerned with matters of

economic policy and it does not have the expertise.

THE CONSIDERATION BY THE COURT

35. I have noted the contentions of the respective parties.

36. Under Section 13 of the Act undoubtedly the 1st respondent can fix the minimum price of Oil Palm FFBs and this includes the authority to fix the formula for determination of the price of the Oil Palm FFBs. Both the petitioners as well as respondents do not dispute the fact that the Government of India had constituted the CACP to recommend the formula for pricing of FFBs of Oil Palm and that the said Commission had comprehensively studied the entire issue and had recommended a suitable formula for the pricing of FFBs of Oil Palm to be made applicable in all the States in the country uniformly. While the petitioners contend that the CACP recommendations have not been taken into account by 1st respondent, this is denied by 1st respondent.

37. It is not disputed that the Additional Secretary, Government of India, Ministry of Agriculture Department of Agriculture and Cooperation, New Delhi had addressed a letter F.No.12-22/2010 (TMOP)-33 dt.02-12-2012 enclosing the report of the CACP submitted to the said department on oil palm. It is not disputed that the CACP recommended the price policy in the following

terms:

“1. (i) It is recommended that formula for pricing of Fresh Fruit Bunches (FFBs) be fixed at 13.54 percent of net Crude Palm Oil (CPO) weighted average price plus 75:25 percent on 9% recovery of palm kernel nuts weighted average price. This is based on estimated cost of cultivators at 75:25 percent in the total cost of production of CPO from farm level to factory level. The recommendation is made after careful analysis of various factor, in particular the overall demand and supply, the domestic costs of production of FFBs and its conversion into CPO, domestic prices and import parity prices (IPP) in short and long run, productivity, competitiveness and other relevant issues.

ii) As CACP has been recommending MSP for all crops in its mandate (24 in number) across the country without any state-specific differential, formula for pricing FFBs be the same across all the states.”

38. The recommendation of the CACP was accepted by the residuary State of Andhra Pradesh vide D.O.Lr.No.1687/Horti/ A2/2012 dt.18-05-2012 addressed by the Principal Secretary to Government, Agriculture and Cooperation Department to the Additional Secretary, Ministry of Agriculture, Union of India, Department of Agriculture and Cooperation, New Delhi.

39. Thereafter, by a letter No.F.No.12-22/2010 (TMOP)-407 dt.13.8.2013, the Under Secretary to the Government of India, Ministry of Agriculture Department of Agriculture and Cooperation, wrote to 1st respondent with regard to the formula for pricing of FFBs of oil palm as follows:

“Sub:- Formula for pricing of Fresh Fruit Bunches of Oil Palm.

The formula for pricing of Fresh Fruit Bunches (FFBs) of Oil Palm is recommended at 13.54 percent of net Crude Palm Oil (CPO) weighted average price, based upon 18% Oil Extraction Ratio (OER), plus 75.25 percent on 9% recovery of palm kernel nuts weighted average price. Any variation in OER would result in change in the pricing formula in respect of percent of net CPO weighted average price to be paid to the oil palm growers as per enclosed table at Annexure.

The OER would be determined as per actual oil content extracted in the past by the processing industry, as established by the State Governments concerned.”(emphasis supplied)

40. In the light of the above proceedings, the question which arises for consideration is:

“whether 1st respondent is entitled to take into account the OER of the AP Oil Palm Processing Unit located at Aswaraopet in the State of Telangana as the basis for price fixation of oil palm FFBs grown in the State of Andhra Pradesh after the bifurcation of the erstwhile composite State of Andhra Pradesh into the State of Telangana and the residuary State of Andhra Pradesh for the oil palm year 2014-15 (01-11-2014 to 31-11-2015)?”

41. In **Cynamide India Ltd. and another** (1 supra), the Supreme Court dealt with the aspect of price fixation under the Drugs (Prices Control) Order, 1979 which contained provisions for fixing maximum selling prices of indigenously manufactured bulk drugs and retail prices of formulations. It held that price fixation is more in the nature of Legislative activity than any other and that a

price fixation measure does not concern itself with the interest of an individual manufacturer or producer. It held that it is general in relation to a particular commodity or class of commodities or transactions and it is a direction of a general character, not directed against a particular situation and it is intended to operate in the future. The Court held that it is a concept in the interest of the general consumer public. Being a Legislative activity, the Court held that it would not attract the principles of natural justice. It however held that the price fixed by the Government can still be questioned on the ground that the conditions stipulated by the statute as relevant were not taken into account or on the ground that there is violation of the right guaranteed by Article 14 of the Constitution of India. It observed:

“31. We mentioned that the price fixed by the Government may be questioned on the ground that the considerations stipulated by the order as relevant were not taken into account. It may also be questioned on any ground on which a subordinate legislation may be questioned, such as, being contrary to constitutional or other statutory provisions. It may be questioned on the ground of a denial of the right guaranteed by Article 14, if it is arbitrary, that is, if either the guidelines prescribed for the determination are arbitrary or if, even though the guidelines are not arbitrary, the guidelines are worked in an arbitrary fashion.”

42. This principle was reiterated in **Shri Sitaram Sugar Company Limited and another** (2 supra) by a Constitution Bench. While stating that the Court has

neither the means nor the knowledge to re-evaluate the factual basis of price fixation orders issued fixing the price of levy record under the provisions of the Essential Commodities Act, 1955 by the Central Government, and reiterating that the judicial review is not concerned with the matters of economic policy since the Court does not have expertise and cannot substitute its judgment for that of the legislature or its agents, nevertheless the Supreme Court observed that price fixation can still be challenged on the ground that it does not satisfy the test of reasonableness. It held that the Court can examine whether the price determined was with due regard to the considerations provided by the statute and whether extraneous matters have been excluded from the determination. It held:

“45. Price fixation is in the nature of a legislative action even when it is based on objective criteria founded on relevant material. No rule of natural justice is applicable to any such order. It is nevertheless imperative that the action of the authority should be inspired by reason: Saraswati Industrial Syndicate Ltd. [at SCR pp. 961, 962; SCC p. 636, para 13]. The government cannot fix any arbitrary price. It cannot fix prices on extraneous considerations: Renusagar.

46. Any arbitrary action, whether in the nature of a legislative or administrative or quasi-judicial exercise of power, is liable to attract the prohibition of Article 14 of the Constitution. As stated in E.P. Royappa v. State of Tamil Nadu “equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch”. Unguided and unrestricted power is affected by the vice of discrimination: Maneka Gandhi v. Union of India. The principle of equality enshrined in Article 14 must guide every State action, whether it be legislative,

executive, or quasi-judicial: *Ramana Dayaram Shetty v. International Airport Authority of India*; *Ajay Hasia v. Khalid Mujib Sehravardi* and *D.S. Nakara v. Union of India*.

47. Power delegated by statute is limited by its terms and subordinate to its objects. The delegate must act in good faith, reasonably, intra vires the power granted, and on relevant consideration of material facts. All his decisions, whether characterised as legislative or administrative or quasi-judicial, must be in harmony with the Constitution and other laws of the land. They must be “reasonably related to the purposes of the enabling legislation”. See *Leila Mourning v. Family Publications Service*. If they are manifestly unjust or oppressive or outrageous or directed to an unauthorised end or do not tend in some degree to the accomplishment of the objects of delegation, court might well say, “Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires”: per Lord Russell of Killowen, C.J. in *Kruse v. Johnson*.

48. The doctrine of judicial review implies that the repository of power acts within the bounds of the power delegated and he does not abuse his power. He must act reasonably and in good faith. It is not only sufficient that an instrument is intra vires the parent Act, but it must also be consistent with the constitutional principles: *Maneka Gandhi v. Union of India* (SCC pp. 314-15).

... ..

57. Judicial review is not concerned with matters of economic policy. The court does not substitute its judgment for that of the legislature or its agents as to matters within the province of either. The court does not supplant the “feel of the expert” by its own views. When the legislature acts within the sphere of its authority and delegates power to an agent, it may empower the agent to make findings of fact which are conclusive provided such findings satisfy the test of reasonableness. In all such cases, judicial inquiry is confined to the question whether the findings of fact are reasonably based on evidence and whether such findings are consistent with the laws of the land. As stated by Jagannatha Shetty, J.

in Gupta Sugar Works: (SCC p. 479, para 4)

“... the court does not act like a chartered accountant nor acts like an income tax officer. The court is not concerned with any individual case or any particular problem. The court only examines whether the price determined was with due regard to considerations provided by the statute. And whether extraneous matters have been excluded from determination.”

58. Price fixation is not within the province of the courts. Judicial function in respect of such matters is exhausted when there is found to be a rational basis for the conclusions reached by the concerned authority.....

59.....What is best for the sugar industry and in what manner the policy should be formulated and implemented, bearing in mind the fundamental object of the statute, viz., supply and equitable distribution of essential commodity at fair prices in the best interest of the general public, is a matter for decision exclusively within the province of the Central Government. Such matters do not ordinarily attract the power of judicial review.”(emphasis supplied)”

43. Keeping in mind the above principles, I will now consider the question framed in this case.

44. It is not disputed that growers of oil palm FFBs are compelled under Section 11 of the Act to sell their produce only to the occupier of the factory located within the factory zone specified under Section 11(1) of the Act. Thus a grower of palm produce oil palm FFBs cannot sell his produce to the occupier of a factory located outside the factory zone notified under the Act. So he cannot sell to an occupier of factory in a different zone or

in a different State.

45. There is no dispute that in the CACP report itself in clause 2 (iv) stated that OER varies a great deal from one garden to another and being a measure of the efficiency of entire palm oil production process, the OER is influenced by both the condition of plantation and efficiency of processing mill (3.11 of the report of CACP). The CACP report mentions the determinants of OER include climatic parameters, source of planting material, management practices, harvesting standard, method of FFB procurement etc. care and maintenance of machinery, mechanisms to recover oil from waste steams, control of spillage, proper steam supply and maintenance required temperature in all processing lines etc. Thus, both plantation parameters and processing efficiency affects OER.

46. Therefore, if one keeps in mind Section 11 of the Act and the admitted factual position that the OER varies from garden to garden depending upon various parameters mentioned above, there cannot be any doubt that the OER prevalent within the geographical boundaries of a State alone can be taken into account while fixing price of Oil Palm FFBs and not the OER of an oil palm processing unit in a different State.

47. Admittedly the Under Secretary, Government of India, Ministry of Agriculture, Agriculture

and Cooperation Department, in his letter F.No.12-22/2010 (TMOP-376) dt.13-08-2013 while forwarding the recommended formula for pricing of FFBs of oil palm, suggested that the OER should be determined as per actual content extracted in the past by the processing industry *as established by the State Government concerned*, and this recommendation of the Government of India was accepted by 1st respondent. This indicates that the Union of India also felt that the OER of an Oil Palm Processing Unit of the State concerned would be a guiding factor in fixing price of Oil Palm FFBs. So it is bound to determine the OER as per the actual oil content extracted in the past by the processing industry as established within the geographical boundaries of the 1st respondent State.

48. Merely because in the erstwhile combined state, the AP Oil Fed had two units- one at Aswarraopet in Khammam District and another in Pedavegi in West Godavari District, and merely because the AP Oil Fed had not been bifurcated by the time G.O.Ms.No.2, dt.18-02-2015 was issued, the 1st respondent cannot take into account the OER of Aswaraopet Oil Palm processing unit which falls in the State of Telangana (after 02-06-2014 when the combined State of Andhra Pradesh was divided into the State of Telangana and the residuary State of Andhra Pradesh) for fixing the price of FFBs of Oil Palm in

the residuary State of Andhra Pradesh. In my opinion, it is impermissible to ignore the OER of the Oil palm processing unit located in Pedavegi in West Godavari District in the residuary State of Andhra Pradesh. This is precisely what was done by 1st respondent.

49. So in my opinion, relevant considerations of OER of Oil Palm Processing Unit in the State of Andhra Pradesh for fixing price of FFBs of Oil Palm in the said State which is indicated by Section 11(2) and Section 12 of the Act, were not taken into account while issuing the impugned G.O. Also the advice of the Union of India contained in the letter F.No.12-22/2010 (TMOP) dt.13.08.2013 of the Under Secretary, Ministry of Agriculture, Department of Agriculture and Cooperation that the OER as per actual Oil Content extracted in the past by the Processing Industry established by the State Government concerned, was clearly ignored.

50. I am of the opinion that the non-bifurcation of the APOILFED by the date G.O.Ms No.2 Agriculture and Co-operation (Horti.& Seri) Department dt.18.2.2015 was issued cannot be the reason for taking the OER of the Aswarraopet Unit in Telangana State as basis for price fixation of Oil Palm FFBs in State of Andhra Pradesh after the two states of Telangana and residuary State of Andhra Pradesh came into existence from 2.6.2014 with well defined boundaries. This is an irrelevant

consideration and ought to have been eschewed by 1st respondent from consideration.

51. As held in **Shri Sitaram Sugar Co. Ltd** (2 supra), price fixation, even if it is in the nature of legislative action, has to be based on objective criteria on relevant material and it should be inspired by reason but not arbitrariness or extraneous considerations and if it is arbitrary, it would attract the prohibition of Article 14 of the Constitution of India.

52. Thus, the price fixation of Oil Palm FFBs in the State of Andhra Pradesh for the Oil Year 01.11.2014 to 31.10.2015 based on the OER of the Oil Palm Processing Unit at Aswaraopet, Khammam District, State of Telangana vide G.O.Ms No.2 Agriculture and Co-operation (Horti.& Seri) Department dt.18.2.2015 is based on the irrelevant considerations and is clearly arbitrary and violative of Article 14 of the Constitution of India.

53. The contention of the respondents that petitioners are estopped from challenging the impugned G.O. since in the meeting which took place on 6.1.2015 attended by their representatives, they had agreed for taking into account of the OER of Aswaraopet of Telangana State's Oil Palm Processing Unit as the basis for price fixation, cannot be countenanced for the reason that Sri R.R. Govindan, the representative of the 1st

petitioner and 3rd petitioner, had not signed on the actual minutes of the meeting and his (R.R. Govindan's) signature appears only in the attendance sheet annexed to the said minutes. The said minutes appear to have been prepared on 13.01.2015 (this date is put by the Secretary, (Hort. and Seri), Agriculture and Cooperation Department) long after the said meeting. In fact the specific plea of petitioners is that the minutes were not supplied to them immediately after the meeting and they gave a letter dt.13.1.2015 to furnish the same but they were not furnished to them. Obviously after this letter was received, the minutes were drafted and signed on 13.1.2015. That is the reason why the said minutes do not contain the signatures of the petitioner's or 5th respondent's representatives.

54. Even the said minutes dt.6.1.2015 record on page-1 thereof the contention of the petitioners that for fixing FFB price of Oil Palm, the OER at 16.57% recorded in the Oil Palm Processing Unit, Pedavegi, in the West Godavari District should be taken into account as per Government of India guidelines or 17.40% which was fixed for the previous Oil Year should be taken into consideration. Therefore it is difficult to accept the plea of respondent no.1 that petitioners had agreed in the meeting held on 6.1.2015 for taking of the OER of the Oil Palm Processing Unit at Aswaraopet, Khammam District,

State of Telangana as the basis for fixation of Oil Palm FFBs in the residuary State of Andhra Pradesh although the minutes seem to suggest it to be so.

55. The main contention of petitioners is that the impugned G.O.Ms. fixing price of Oil Palm FFBs is violative of Art.14 of the Constitution. There cannot be any estoppel against the Constitution as held in **Olga Tellis v. v . Bombay Municipal Corpn.**^[3] In that case the Supreme Court held:

“ 28.The doctrine of estoppel is based on the principle that consistency in word and action imparts certainty and honesty to human affairs. If a person makes a representation to another, on the faith of which the latter acts to his prejudice, the former cannot resile from the representation made by him. He must make it good. This principle can have no application to representations made regarding the assertion or enforcement of fundamental rights. For example, the concession made by a person that he does not possess and would not exercise his right to free speech and expression or the right to move freely throughout the territory of India cannot deprive him of those constitutional rights, any more than a concession that a person has no right of personal liberty can justify his detention contrary to the terms of Article 22 of the Constitution. Fundamental rights are undoubtedly conferred by the Constitution upon individuals which have to be asserted and enforced by them, if those rights are violated. But, the high purpose which the Constitution seeks to achieve by conferment of fundamental rights is not only to benefit individuals but to secure the larger interests of the community. The Preamble of the Constitution says that India is a democratic Republic. It is in order to fulfil the promise of the Preamble that fundamental rights are conferred by the Constitution, some on citizens like those guaranteed by Articles 15, 16, 19, 21 and 29 and, some on citizens and non-citizens alike, like those

guaranteed by Articles 14, 21, 22 and 25 of the Constitution. No individual can barter away the freedoms conferred upon him by the Constitution. A concession made by him in a proceeding, whether under a mistake of law or otherwise, that he does not possess or will not enforce any particular fundamental right, cannot create an estoppel against him in that or any subsequent proceeding. Such a concession, if enforced, would defeat the purpose of the Constitution. Were the argument of estoppel valid, an all-powerful State could easily tempt an individual to forego his precious personal freedoms on promise of transitory, immediate benefits. Therefore, notwithstanding the fact that the petitioners had conceded in the Bombay High Court that they have no fundamental right to construct hutments on pavements and that they will not object to their demolition after October 15, 1981, they are entitled to assert that any such action on the part of public authorities will be in violation of their fundamental rights....”(emphasis supplied)

Therefore the contention of 1st respondent that petitioners are estopped by their alleged acceptance in the meeting of 6.1.2015 to adopt the OER of Aswarraopet Oil Palm Processing Unit and so they cannot challenge the G.O.Ms No.2 Agriculture and Co-operation (Horti.& Seri) Department dt.18.2.2015, cannot be countenanced.

56. The contention of the 5th respondent that the Oil Palm Processing Unit at Aswaraopet had the latest equipment which is not there at Pedavegi also cannot be countenanced since this is not the reason assigned in the impugned G.O. or in the counter-affidavit filed by the 1st respondent.

57. In this view of the matter, the Writ Petition is

allowed and a Writ of Mandamus is issued declaring G.O.Ms.No.2, Agricultural & Cooperation (Horti & Seri.) Department, dt.18.02.2015 issued by the 1st respondent fixing the formula for the pricing of Oil Palm Fresh Fruit Bunches (FFBs) as arbitrary, illegal and violative of Art.14 of the Constitution of India. Consequently the 1st respondent is directed to fix the price of Oil Palm FFBs in the State of Andhra Pradesh for the Oil Year 01.11.2014 to 31.10.2015 in accordance with the Act and keeping in mind the observations made in this Order within eight (08) weeks from the date of receipt of a copy of this order.

58. On 10.04.2015, in this Writ Petition this Court had observed that pending this Writ Petition, the petitioners shall continue to pay OER of 17.55% for 2014-15 (wrongly mentioned as 2013-2014 in the docket order) and it was directed that if the petitioners succeed, the difference amount can be deducted in future payments.

59. Keeping in mind this order, it is further directed that if on re-fixation by 1st respondent of the price of Oil Palm FFBs in the State of Andhra Pradesh for the Oil Year 01.11.2014 to 31.10.2015, it is found that the petitioners had paid excess/less price for that year, such excess/less price shall be adjusted in the future payments.

60. The Writ Petition is allowed as above. No

costs.

61. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 15-12-2015

Kvr/Vsv

L.R. Copy to be marked : Yes.

[\[1\]](#) (1987) 2 S.C.C. 720

[\[2\]](#) (1990) 3 S.C.C. 223

[\[3\]](#) (1985) 3 SCC 545, at page 569