IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12609 OF 2018

Saikrupa Sugar and Allied Industries
Ltd. Through General Manager
H. N. Patil .. Petitioner

Versus

The Government of India through
Secretary and others .. Respondents

Shri V. D. Sapkal, Advocate with Shri P. N. Khedkar, Advocate for the Petitioner.
Shri S. B. Deshpande, A.S.G. for Respondent Nos. 1 to 3.
Shri A. R. Kale, A.G.P. for Respondent Nos. 4 and 5.

CORAM : S. V. GANGAPURWALA AND
A. M. DHAVALE, JJ.

CLOSED FOR ORDERS ON : 02.05.2019
ORDER PRONOUNCED ON : 07.06.2019

FINAL ORDER **(*Per S. V. Gangapurwala, J.*) :-**

. The petitioner assails the notifications restricting the petitioner sugar factory from selling the sugar manufactured by it beyond the particular quantity and further seeks directions to permit the petitioner sugar factory to sell sugar in open market from its available stock manufactured in the crushing season 2018-2019.

2. Mr. Sapkal, the learned advocate for the petitioner submits that, the petitioner sugar factory is established in the year 2000. It has two units. The first unit is established in the year 2000 and has crushing capacity of 1250 metric tonne per day. The second unit is established in the year 2010 and has crushing capacity of 7500 metric tonne per day. From 2012 all sugar factories are permitted to sell the sugar manufactured by them in open market without any control of the respondents. The petitioner could not run the sugar factory for some years because of lack of finance. For the crushing season 2014-2015 and 2015-2016 the petitioner arranged its own funds for crushing sugar cane of agriculturists. However for the year 2016-2017 the petitioner could not run its both units because of financial crisis. For the year 2017-2018 the petitioner had carried out its activity in the crushing season. The crushing season for the year 2018-2019 commenced on 20.10.2018 and till the filing of petition the petitioner could crush sugar cane and the petitioner sugar factory has about 1325 metric tonne of sugar in its godown. The petitioner has total 15241 quintals sugar readily available for sale. The learned counsel submits that, under the impugned notifications restriction has been placed to sell the sugar. Since June 2018 the petitioner is permitted to sell restricted quantum of sugar as per monthly orders and about 16124 metric tonne sugar is still lying in the godown. The learned counsel submits that, accounts of the petitioner sugar factory are non performing assets and finance in the form of loan to the petitioner is given by

various financial institutions. As per Sugarcane (Control) Order, 1966, the petitioner has to pay Fair and Remunerative Price (F.R.P.) for the sugarcane purchased from the farmers within 14 days of crushing of sugarcane, otherwise interest at the rate of 15% is added in the amount due. In addition to F.R.P., the petitioner has to pay for sugarcane harvesting, transportation, salaries of employees, electricity, chemicals, fuel and other expenses.

3. The learned counsel further submits that, the petitioner sugar factory is neither producing any byproduct like ethanol, nor exporting sugar as the rates for sugar export are very low as compared to Indian market. The learned counsel submits that, if the similar situation persists, then the petitioner has no option, but to close down the sugar factory and it would be threat to the 500 permanent employees and 10,000 labourers. The learned counsel submits that, the impugned notification is violative of fundamental rights of the petitioner guaranteed under Article 19(1)(g) of the Constitution of India. The impugned notification is arbitrary, unreasonable and is violative of Article 14 of the Constitution of India.

4. The learned counsel relies on various orders passed by this Court passed in Writ Petition No. 8505 of 2005 dated December, 22, 2005, order dated 22nd December, 2006 in Writ Petition No. 7300 of 2006, so also the order passed by the Division Bench of

Allahabad High Court dated 19.03.2002 in Writ Petition No. 1164 of 2002, the order dated 19.04.2002 in Writ Petition No. 164 of 2002 passed by the Division Bench of Uttaranchal High Court.

5. Mr. Deshpande, the learned Assistant Solicitor General for respondent Nos. 1 to 3 submits that, the production of sugar in the sugar season 2017-2018 was highest ever i. e. above 321 Lakh metric tonne as against the projected demand of 250 Lakh metric tonne. This led the surplus stock in the market adversely affecting the market sentiments. The scenario of surplus stock has created demand supply imbalance and depressed market sentiments leading to crash in sugar prices after January 2018, even below the component of cane cost payable to farmers. This has adversely affected the liquidity position of mills leading to accumulation of cane price dues which had already reached an alarming level. In order to stabilize sugar price in reasonable level and to improve the liquidity of mills thereby enabling them to clear cane price dues of farmers, Central Government took number of steps including increasing the import duty from 50% to 100%, withdrawal of custom duty on export of sugar, imposition of stock holding limits. The Government has also extended financial assistance to sugar mills to offset cost of cane at the rate of Rs. 5.50 per quintals of cane crushed during 2017-2018 sugar season. Even after taking all such measures, the prices of sugar continued to fall and reached at Rs. 24/- per Kg. in Maharashtra during May 2018. In view of that, it was decided

to evolve further strategies to overcome the crisis. The comprehensive package of additional measures was evolved. Same was duly approved by the Cabinet Committee on Economic Affairs. The impugned notification is also part of policy. The concept of imposition of stock holding limits on mills is entirely different from release order of sugar. It was in vogue prior to deregulation of sugar sector upto 2011-2012. The learned A. S. G. further submits that, the decision is taken by the Government in exercise of powers conferred by Section 3 of the Essential Commodities Act read with Clauses 4 and 5 of the Sugar (Control) Order, 1966. Same is placed in 09th Schedule of the Constitution of India.

6. The learned A. S. G. further submits that, policy is yielding good results. As a result of this policy, sugarcane arrears have come down from Rs. 23232 crores as in the month of May 2018 to Rs. 1302 crores as on 20.02.2019. As a result of positive sentiments, the Government has decided to increase minimum selling price of sugar from Rs. 29/- per Kg. to Rs. 31/- per Kg. Further the Government has decided to provide assistance at the rate of Rs. 13.88 paise per quintal of cane crushed for production of sugar under notification dated 05.10.2018. The schemes are being implemented providing quota of each sugar mill and executive instructions are issued pursuant to the powers U/Sec. 3 of the Essential Commodities Act read with Clauses 4 and 5 of the Sugar (Control) Order, 1966. On the basis of formula and

calculations stock holding limits of each and every sugar mill is arrived at.

7. We have considered the submissions canvassed by the learned counsel for respective parties.

8. There cannot be any dispute with the proposition that this Court in exercise of its powers under Article 226 of the Constitution of India would be loath in interfering with the economic policies of the Government. This Court would not sit as an Appellate Authority over the decision taken by the experts, more particularly in matters involving financial and economic ramifications.

9. The respondents have given the cause and the reason for evolving the policy. The Government, it appears that pursuant to the powers under Section 3 of the Essential Commodities Act read with clauses 4 and 5 of the Sugar (Control) Order, 1966 issued executive instructions providing for formula on the basis of stock holding limits of each and every sugar factory. The said formula is as under :

> "Opening stock as on 01.03.2019 plus (+) Production during the month of March, 2019 minus (-) Domestic dispatch in the month of March, 2019 not exceeding the quantity as mentioned in column (4) of the table below against respective sugar

mill minus (-) Dispatch for export during the month of March 2019".

10. Because of the policy evolved by the respondents, the petitioner may face some hardship, however, the balance will have to be struck. The respondents certainly have unfettered powers under Section 3 of the Essential Commodities Act read with Clauses 4 and 5 of the Sugarcane (Control) Order, 1966 to evolve policy so as to take care of the imbalance of the demand and supply and to regulate the sugar prices. The respondents have on affidavit placed the data demonstrating huge surplus stock in the market adversely affecting the market sentiments. In order to stabilize the sugar price at reasonable level and to improve the liquidity of mills thereby enabling them to clear cane price dues of farmers, Central Government, it appears, has taken number of steps, such as increasing the import duty from 50% to 100%, withdrawal of custom duty on export of sugar, imposition of stock holding limits. The Government has also extended financial assistance to sugar mills to offset cost of cane at the rate of Rs. 5.50 per quintals of cane crushed during 2017-2018 sugar season to be directly credited into farmers' account to clear their cane price arrears. The expected outflow on this account would be about Rs. 1540 crores. It has been further stated that, even after taking such measures, the price of sugar continued to fall and reached at Rs. 24/- per Kg. in Maharashtra during May 2018. In view of the above, it was decided to evolve further

strategies to overcome the crisis. The Government conducted a review and evolved a comprehensive package to maintain that price level remunerative enough to enable the sugar mills to generate funds from sale of sugar in the domestic market and liquidate the accumulated cane price due to the tune of Rs. 23232 crores. The said comprehensive package of additional measures was duly approved by the Cabinet Committee on Economics Affairs. The following decision, it appears has been taken.

> "A. To create and maintain buffer stock of 30 LMT of sugar for one year. Mills will be reimbursed expenditure on carrying cost to maintain the allocated buffer stock. On this account, Government would incur total expenditure of Rs. 1175 crore, which would be directly credited into farmer's account on behalf of mills against their cane price dues and subsequent balance, it any, would be credited to mill's account.
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> B. To notify the Sugar Price (Control) Order, 2018 under Essential Commodities Act, 1955 to fix minimum selling price of white sugar at the mill gate below which no white sugar can be sold and delivered by a sugar mill in the domestic market and to initially fix the minimum selling price of white sugar at Rs. 29/- Kg. It was also decided that presently, this would be done along with imposition of stock holding limits on sugar mills. Initially, stock limit on mills will be imposed for the current sugar season (up to

> September 2018), which may be extended or withdrawn by the Department of Food and Public Distribution at any time based on market price, availability of sugar, etc."

11. The decision taken for fixing minimum selling price of sugar along with imposition of stock holding limits on mills was due to extraordinary circumstances. Day by day sugar prices were sliding down and accumulation of cane price arrears of farmers were also increasing. The Government had to step in to protect the interest of farmers and to save the industry. The object of the current policy as has been demonstrated is to improve liquidity position of mills. The liquidity position of mills can be improved if sugar prices stabilize at reasonable level. Further stock limit on sugar mills has been imposed in a manner that release of sugar from the mills is restricted to the extent of consumption requirement of the country for stabilizing the sugar price at reasonable level. One of the reason given for enforcing stock holding limits on mills is to ensure that a level playing field is provided to all mills. It is stated by respondents that since the current sugar price is depressed on implementation of the minimum price of Rs. 29/- per Kg., the mills having large economies of scale of operation producing better quality of sugar and having good access to market, will always be in a better position to continue to dispose of their stocks to avail benefits. But due to limited market demand, mills with weaker credentials and remotely placed may not be able to compete and

sell at minimum price of Rs. 29/- per Kg. Imposition of stock holding limits on sugar mills will remove disparities and maintain uniform market for all mills across the sector. In absence of stock holding limits, all the mills across the country cannot sell more quantity of sugar as they wish since the market is limited to the extent of domestic consumption. Only few aggressive mills will be gainers at the cost of weaker mills. It is further stated because of the steps taken by the Government prescribing minimum price of Rs. 29/- per Kg. along with imposition of stock holding limits on the sugar mills from the month of June 2018 has brought the desired results. The ex-mill prices of sugar in the domestic sale has been improved to Rs. 34.00 per Kg. Because of the consequential improvement in prices, the sugar industries are in a position to liquidate the sugar cane price dues to the farmers. The result of the Government policy is evident on the face of the record as the accumulated cane price arrears of farmers have come down from the peaked level of Rs. 23232 crorers in the month of May 2018 to Rs. 3981 crores as on 17.12.2018.

12. It also appears that imposition of stock holding limit is temporary measure resorted to by the Government to provide weaker sugar mills in the initial phase of stabilizing sugar price level playing field and so also to enable the sugar mills to clear cane price dues of farmers.

13. The respondents have on affidavit stated that once sugar price is stabilized, the Central Government may review the policy and may take decision for withdrawal or continuation of the stock holding limit. The same is not a permanent scenario, however, depending upon the market conditions prevailing in the country. The policy decision taken by the Government is applicable unanimously to all sugar mills and is for the benefit of entire sugar industry. It is not that the petitioner sugar factory is discriminated.

14. The petitioner is not in a position to demonstrate that the policy of the Government is not in larger interest of the public. The principle *Salus populi suprema lex* would apply. The Central Government is the best judge to decide about market scenario and to take effective steps. It is assisted by the experts and after due deliberation the policy is evolved. The said policy is also temporary and review of the policy would be taken as is submitted by the respondents on affidavit.

15. The petitioner certainly may face some difficulties, however, the individual interest has to yield to larger benefit of the society. The contention of the petitioner is that, the petitioner is required to pay F.R.P. and as entire sugar is not allowed to be sold, it would not be in a position to pay the F.R.P. The petitioner may take steps with regard to the payment of F.R.P., however, for the individual interest, the policy as is

evolved and beneficial for the society and all the mills cannot be struck down.

16. The respondents would certainly review the policy after the stabilization of the prices as is contended in the affidavit filed.

17. In the result no benefit can be granted to the petitioner.

18. In the light of the above, the writ petition stands disposed of, however, with no order as to costs.

[A. M. DHAVALE, J.] **[S. V. GANGAPURWALA, J.]**

bsb/June 19