R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10501 OF 2018

M/s. Rajgad Sahkari Sakhar Karkhana Ltd .. Petitioner

Versus

Union of India & Anr. .. Respondents

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- Mr. B.R. Deshmukh for the Petitioner
- Mr. P.A. Vyas a/w Ms. Shiny Roy for the Respondents

....

CORAM : AKIL KURESHI &
S.J. KATHAWALLA, JJ.

DATE : JULY 3 & 4, 2019.

P.C.:

1. The petitioner has challenged a portion of the Notification dated 28.12.2018 issued by Government of India, Ministry of Consumer Affairs, Food and Public Distribution (Directorate of Sugar & Vegetable Oils).

2. Having heard the learned counsel for the parties, we notice that this very Notification came to be challenged before the Division Bench at Aurangabad of this Court in the case of **Saikrupa Sugar and Allied Industries Ltd. Vs. The Government of India** in **Writ Petition No. 12609 of**

2018[1]. The petition came to be dismissed by detailed judgment dated 7.6.2019. Ordinarily, therefore, no further efforts would be required from us. However, learned counsel for the petitioner strenuously urged firstly that the decision in case of Saikrupa Sugar and Allied Industries (supra) does not cover the present situation and in any case, certain arguments do not seem to have been advanced before the Court. We may, therefore, give our separate reasons.

3. Brief facts are as under:

Petitioner is a registered co-operative society engaged in the business of production of sugar after collecting sugarcane from its member farmers. The Government of India in order to stabilize the sugar prices in the market, first issued an order dated 7.6.2018 which reads as under:-

> **ORDER**
>
> New Delhi, the 7th June, 2018
>
> **S.O. 2347(E)**.-- In exercise of the powers conferred by section 3 of the Essential Commodities Act, 1955 (10 of 1955) read with clause 4 and 5 of the Sugar (Control) Order, 1966, the Central Government hereby directs that every producer producing sugar by vaccum pan process shall hold such quantity of white sugar or refined sugar at the end of each month as may be specified by the Central Government for each month.

1 Order dated 7.6.2019 (Coram : S.V. Gangapurwala & A.M. Dhavale, JJ)

2. This order shall come into force with immediate effect.

In terms of this order, the Central Government provided in its impugned order dated 28.12.2018 that every producer of sugar by vaccum pan process shall hold such sugar stock at the end of January 2019 including the quantity of buffer stock as follows:-

> "Opening stock as on 01.01.2019 Plus (+) production during the month of January 2019 minus (-) Domestic dispatch in the month of January 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 January 2019."

This order contains a table which lists several sugar manufacturers and specifies maximum quantity of sugar for domestic sale and dispatch during the month of January 2019. In case of the petitioner, this quantity specified is 1027 Metric Tonnes (M/T). The basis for fixing this individual quota is also found in the order itself which reads as under:-

> 2. The sugar-mill wise maximum quantity of white / refined sugar for domestic sale and dispatch during the month of January 2019 as given in column 4 of the table above has been made taking into account the Stocks as on 30th November, 2018 as well as the estimated production of sugar in the month of December, 2018 as submitted by sugar mills through e-mails as well as through their letters. However, the said maximum sales quantity will be subject to actual production achieved by the said sugar mills in the month of December, 2018 and adjustment in subsequent orders accordingly."

4. The grievance of the petitioner is that under the order dated 7.6.2018, it was open for the Government of India to specify the quantity of sugar to be held by individual manufacturers, however, this order did not envisage any restriction of sale of sugar by the manufacturers. In short, the petitioner's grievance revolves around ceiling of sale of sugar imposed by the Government of India under the impugned order dated 28.12.2018.

5. Appearing for the petitioner, learned counsel Mr. B.R. Deshmukh raised following contentions:-

(i) The order dated 7.6.2018 does not envisage any restriction on sale of sugar by sugar manufacturers. The same, therefore, could not have been imposed through the prescription by the Government of India vide order dated 28.12.2018;

(ii) The restriction is unreasonable, violative of the petitioner's fundamental right under Article 19 of the Constitution of India;

(iii) There is no yardstick provided for deciding the ceiling of sale of sugar by each manufacturer. The same is arbitrarily fixed;

(iv) Even otherwise, the restriction is wholly unreasonable.

Learned counsel took us through the actual receipt and expenditure details prepared by the petitioner to demonstrate that going by restrictions imposed by the Government, the petitioner would run into huge losses and would be unable to discharge its statutory liabilities such as provident fund and taxes.

6. On the other hand, learned counsel for the respondents opposed the petition contending that the entire issue is covered by the decision of this Court in the case of Saikrupa Sugar and Allies Industries Ltd (supra). Even otherwise, the petitioner has challenged the policy decision of the Government of India. Judicial review is, therefore, necessarily restricted. Learned counsel relied on the affidavit in reply filed by the respondents in which the reasons for imposition of restrictions have been set out. He requested that the the petition be dismissed.

7. This issue has been examined at length by the Division Bench of this Court in the case of Saikrupa Sugar and Allied Industries Ltd (supra). We may profitably refer to the discussion in the said judgment.

"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."

Independently also, we do not find any merit in the petition. Firstly, the order dated 7.6.2018 provides that the Central Government had directed that every purchaser producing sugar by vaccum pan process shall hold such quantity of sugar at the end of each month as may be specified by the Central Government for every month. It was pursuance to the said order that the impugned Notification came to be issued. As we have noted, this Notification mandated every sugar manufacturer to hold stock of sugar at the end of month of January 2019 in specified quantity. This quantity had to be arrived at by taking into account the pending stock as on 1.1.2019, added by production during the month of January 2019 and reduced by domestic dispatch in the month of January 2019 (which would not exceed the quantity mentioned in the Column 4 of the table contained in the said order). Column 4 of the table prescribed maximum quantity of sugar for domestic sale and dispatch for the month of January 2019. Each sugar manufacturer was assigned a specific quota beyond which it cannot dispatch sugar in the month of January 2019 in the domestic market.

8. This prescription is an integral part of the formula which takes into account three different axix; one of them being the ceiling of domestic dispatch during the month in question. The ceiling of domestic dispatch, thus, is an integral part of the formula prescribed under the said Notification dated 28.12.2018 and is thus, not dehors or ultra vires to the powers confirmed under the order dated 7.6.2018. Learned counsel for the petitioner was candid enough to state that under the provisions of the Essential Commodities Act, 1955, it is otherwise not impermissible for the Central Government to specify quota for a sugar factory to manufacture and sale of its sugar in the domestic market.

9. We also do not find that the ceiling prescribed for each manufacturer and in particular to the petitioner suffers either from arbitrariness or unreasonableness. The reason for prescribing the quota is found in a detail affidavit in reply filed before us. As per this reply, the entire exercise had to be undertaken by the Government of India in order to control sharply dropping sugar prices in the domestic market. It was pointed out that the Government of India found that day by day sugar prices were sliding down and accumulation of cane price arrears of farmers was mounting. The Government of India, therefore, had to step in to control the situation. The steps were, therefore, envisaged to protect the interest of the farmers and also the sugar industry in general. It is pointed out that the stock-holding limits on mills was imposed to ensure that a level playing field is provided to all mills. It is further stated that since the prices were low, the mills having large scales of operation would be at an advantage as compared to smaller mills. In absence of stock holding limit of the mills across the country, all sugar factories would be free to sell sugar in unlimited quantity in the domestic market which was not desirable. Non controlling drop of sugar prices would have cascading effect and may even impact the next sugar season. In the reply, it is pointed out that this was meant to a temporary measure and once the sugar prices are stabilized, the Government would review the situation for withdrawal of the restriction.

10. It can thus be seen that the intervention of the Government of India was necessary on account of unusual circumstances. It was well deliberated and well considered action based on contemporaneous data. Even the rationale for fixing quota for each sugar manufacturer has been mentioned in the impugned order itself which we have reproduced earlier. In such portion of the order, it is pointed out that the mill-wise maximum quantity of sugar for domestic sale and dispatch during the month of January 2019 has been prescribed taking into account the stocks as on 30.11.2018 as well as the estimated production of sugar in the month of December, 2018 as submitted by sugar mills. It is further pointed out that maximum sale quantity will be subject to actual production achieved by the sugar mills in the month of December, 2018 and adjustment in subsequent orders will be made accordingly. Thus, the quota assigned to each sugar mill for maximum dispatch in the local market was arrived at by taking into account its stock for the month of November 2018 and tentative figures of production for December 2018. On the basis of such figures, projection would be made. If there is a variation in the final figures in the month of December 2018, the adjustment will be made in the following months. Thus, the fixation of ceiling for each sugar manufacturer was arrived at by applying a scientific formula. This prescription, therefore, certainly cannot be categorized as random, arbitrary or unreasonable.

11. It may happen that this order may hurt the sugar manufacturer industry and in particular some units and cause inconvenience. However, firstly this was meant to be a temporary measure. Secondly, the step was taken after taking into account the emerging situation and larger public interest and lastly in such policy fields, the judicial review of the decision arrived at by the Government with the aid of experts would necessarily be extremely limited. Unless the decision is shown to be malafide or manifestly arbitrary, the Court would not venture into substituting the wisdom of execution by its own understanding, unaided by the expertise or advice of the experts in the filed.

12. In the result, we do not find any merit in the petition. The petition is, therefore, dismissed.

[S.J. KATHAWALLA, J.] **[AKIL KURESHI, J]**