M/S. DIWAN SUGAR & GENERAL MILLS (PRIVATE) LTD. AND OTHERS

*v.*

THE UNION OF INDIA

*1959*

*January 23.*

(S. R. DAS, C. J., JAFER IMAM, S. K. DAS, K. N. WANCHOO and M. HIDAYATULLAH, JJ.)

*Sugar Control—Notification fixing price ex-factory—Legality —Restrictions on right to trade—Discrimination—Sugar (Control) Order, 1955, cl. 5—Essential Commodities Act, 1955 (10 of 1955), s. 5—Constitution of India, Arts. 14, 19(1)(g).*

In exercise of the powers under s. 3 of the Essential Commodities Act, 1955, and under cl. 5 of the Sugar (Control) Order, 1955, the Government of India issued a notification dated July 30, 1958, fixing the ex-factory price per maund of sugar produced in Punjab, Uttar Pradesh and North Bihar. The petitioners challenged the legality of the notification on the grounds (1) that it was beyond the ambit of authority conferred on the Central Government under s. 3 of the Essential Commodities Act, 1955, and clause 5 of the Sugar (Control) Order, 1955, and that, in any case, it was bad as it could not subserve the purposes of the Act ensuring equitable distribution of the commodity to the consumer at a fair price, (2) that the Act and the Order did not authorise the Central Government to fix ex-factory prices, and, in any case, the notification failed to fix prices for the ultimate consumer, (3) that it imposed an unreasonable restriction on the right to trade under Art. 19(1)(g), inasmuch as it fixed the price arbitrarily, and there was no reasonable safeguard against the abuse of power, and (4) that it was discriminatory because it fixed ex-factory prices only for factories in Punjab, Uttar Pradesh and North Bihar and not for factories in other parts of India and there was no reasonable classification discernible on any intelligible differentia on the basis of which prices had been controlled in certain regions only.

*Held*, (1) The notification dated July 30, 1958, is within the authority conferred on the Central Government by s. 3 of the Essential Commodities Act, 1955, and cl. 5 of the Sugar (Control) Order, 1955.

(2) Section 3 of the Act which provides for control of price is very general in terms and authorises the Central Government to fix the ex-factory price of sugar without fixing the wholesale or retail prices; and, since fair prices for the consumer are ensured by fixing the ex-factory price, the notification in question subserves the purposes of the Act, and is valid.

(3) Clause 5 of the Sugar (Control) Order, 1955, lays down the factors which have to be taken into consideration in fixing prices, and as the prices were fixed in accordance therewith, the

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action taken by the Government in the interests of the general public could not be challenged on the ground that it was an unreasonable restriction on the right to carry on trade under Art. 19(1)(g) of the Constitution.

(4) Though under the notification prices are fixed for factories only in Punjab, Uttar Pradesh and North Bihar, in effect, they are fixed for the whole of India, as the other States are deficit; consequently, the notification brought about no discrimination between different regions.

ORIGINAL JURISDICTION: Writ Petition No. 134 of 1958.

Writ Petition under Article 32 of the Constitution of India for the Enforcement of Fundamental Rights.

*N. C. Chatterjee, K. P. Mukherjee, P. D. Himatsinghka* and *B. P. Maheshwari*, for the petitioners.

*M. C. Setalvad, Attorney-General for India, B. Sen* and *R. H. Dhebar*, for the respondent.

*K. P. Khaitan, K. P. Mukherjee* and *B. P. Maheshwari*, for Interveners 1 to 10.

*G. S. Pathak, K. P. Mukherjee* and *B. P. Maheshwari*, for Interveners 11 to 13.

1959. January 23. The Judgment of the Court was delivered by

*Wanchoo J.*

WANCHOO, J.—This petition under Art. 32 of the Constitution challenges the legality of the notification dated July 30, 1958, (hereinafter called the impugned notification), issued by the Government of India fixing the ex-factory price per maund of sugar produced in Punjab, Uttar Pradesh and North Bihar. It has been supported by two sets of interveners consisting of sugar factories in these areas who did not join the petition.

The case of the petitioners is that the Essential Commodities Act, 1955 (X of 1955), (hereinafter called the Act), was passed by Parliament in 1955, for the control of the production, supply and distribution of, and trade and commerce in, certain commodities, which included sugar. By s. 3 of the Act, the Central Government was given the power, if it was of opinion that it was necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and

availability at fair prices, to provide by order for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein. Section 3(2) further provided *inter alia* for controlling the price at which any essential commodity might be bought or sold. In exercise of these powers, the Central Government promulgated the Sugar (Control) Order, 1955, (hereinafter called the Order), on August 27, 1955. Clause 5 of the Order gave power to the Central Government, by notification in the Official Gazette, to fix the price or the maximum price at which any sugar might be sold or delivered, and different prices might be fixed for different areas/factories or different types or grades of sugar. Such price or maximum price had to be fixed with due regard to various factors, with which we shall deal later. On June 27, 1958, the Central Government promulgated the Sugar Export Promotion Ordinance, No. V of 1958, empowering it to appoint an export agency for carrying out the work of buying sugar in the Indian market and exporting the same to foreign markets and fixing the quantity of sugar for export. The Central Government was also authorised by that Ordinance to fix quotas apportioning the quantity of sugar to be supplied by each factory for export and levy an additional excise duty at the rate of Rs. 17 per maund on any factory failing to deliver its quota of sugar for export. On the same day, three notifications were issued : (i) fixing 50,000 tons of sugar as the quantity to be exported out of India during the period ending October 31, 1958, (2) appointing the Indian Sugar Mills Association, Calcutta, as the export agency, and (3) delegating the powers conferred on the Central Government to the Chief Director of Sugar and Vanaspati, Ministry of Food and Agriculture also. Then followed the impugned notification fixing ex-factory prices of sugar produced by the factories in Punjab, Uttar Pradesh and North Bihar. It is being challenged on the ground that the price fixed is considerably below the cost of production and ignores various factors affecting the cost of production and distribution of sugar including charges incidental to sale and

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distribution. The impugned notification is also attacked on the ground that it did not fix any price at which the persons purchasing sugar from the mills would sell it, so that it was open to the middleman who bought sugar from the factories to sell it at any price, thus creating discrimination between factories and factories and between the producers selling sugar and the middlemen who buy sugar selling the same in their turn. It is also alleged that fixing of the price was arbitrary and did not take into account the cost of production of a large number of units in the country and did not provide for a fair and equitable distribution of sugar in the country at a price in any way related to the price at which the factories were compelled to sell their products. Consequently, the petitioners prayed for an appropriate order, direction or writ in the nature of mandamus or any other writ quashing the Sugar (Control) Order, 1955, and all orders made in pursuance of it including the impugned notification.

The petition has been opposed by the Central Government. It is contended on their behalf that the entire object of fixing the price of sugar was (a) to make it available at a reasonable price to the consumer, and (b) to ensure adequate and smooth flow and supply of sugar which is an essential commodity for the life of the people to all parts of the country according to their needs and requirements, checking the speculative tendency of the market and destroying the creation of an artificial shortage by unscrupulous persons. Prices of sugar were first put under control as far back as 1942 and this control continued up to 1947, when it was withdrawn on December 8, 1947. It was, however, found that internal prices were raised during the de-control period on the pretext of subsidizing export, which never materialised. In consequence, control was again imposed on September 2, 1949; but it was lifted in 1952, when it was found that there was sufficient stock available at the end of the 1951-52 season. In 1953-54, however, production fell and control had again to be imposed for that season. It was, however, lifted a year later. In November 1956

there was a considerable surplus of sugar and the Central Government permitted export of 1·53 lakh of metric tons in 1957. The Central Government was again approached in 1958 to make the export of sugar a permanent feature and it agreed to allow export during 1958 in view of the carry over from the previous season and also for earning foreign exchange in the interest of the country. Therefore, the Central Government promulgated the Sugar Export Promotion Ordinance, No. V of 1958, on June 27, 1958. But as this Ordinance was expected, a tendency developed in the sugar industry to push up prices after the month of April 1958. As a result of this tendency, prices went up by about a rupee per maund in May and June 1958, and it was feared that they might go up further in view of the quota for export announced on June 27, 1958. In view of this apprehension, the industry assured Government that the sugar factories would offer to sell their released stocks freely at prices prevalent before the export policy was announced, i.e., in the week before June 27, 1958. In spite, however, of this assurance, there was a general rise in prices during the four weeks preceding the impugned notification. This rise was particularly marked in Northern India. It was in these circumstances that the Government decided to control ex-factory prices of sugar in Punjab, Uttar Pradesh and North Bihar. The Government took all relevant factors into account in fixing the price. This was done in the interest of the general public in order that sugar might be available at fair prices. As Uttar Pradesh and North Bihar are the main surplus areas and feed the deficit areas of the country, it was not necessary to control prices elsewhere; nor was it necessary to control prices beyond the ex-factory stage as the prices in the wholesale or the retail markets are governed by ex-factory prices. There was in the circumstances no question of discrimination or any unreasonable restriction on carrying on trade in sugar. The Government did not admit that the price fixed was below the cost of production generally. Consequently, it was prayed that the petition should be dismissed.

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Learned counsel appearing for the petitioners and the interveners raise the following points in support of their contention that the impugned notification is illegal and invalid :—

(1) (a) The impugned notification is beyond the ambit of authority conferred on the Central Government under s. 3 of the Act and clause 5 of the Order, and in any case it is bad as it cannot possibly subserve the purposes of the Act ensuring equitable distribution of the commodity to the consumer at a fair price ;

(b) The impugned notification merely fixes ex-factory prices and is bad, firstly, on the ground that the Act and the Order do not authorise the Central Government to fix ex-factory prices, and, secondly, on the ground that even if ex-factory prices can be fixed under the Act and the Order, the impugned notification is still bad as it fails to fix prices for the ultimate consumer which must be done under the Act ;

(2) The impugned notification imposes an unreasonable restriction on the right to trade under Article 19 (1) (g), inasmuch as (i) it compels factories to sell sugar at a loss, (ii) it fixes the price arbitrarily, and (iii) there is no reasonable safeguard against the abuse of power and no provision for a check by way of appeal or otherwise ;

(3) The impugned notification is bad inasmuch as it is discriminatory because it fixes ex-factory prices only for factories in Punjab, Uttar Pradesh and North Bihar and not for factories in other parts of India and there is no reasonable classification discernible on any intelligible differentia on the basis of which prices have been controlled in certain regions only.

*Re.* (*1*) (*a*).

The Act deals with essential commodities which have been defined therein. The preamble shows that it has been passed in the interest of the general public for the control of the production, supply and distribution of, and trade and commerce in, certain commodities. Section 3 of the Act gives power to the Central Government to pass orders under the Act if it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing

their equitable distribution and availability at fair prices. No attack has been made on the *vires* of the Act; but the *vires* of the Order relating to sugar passed under the Act and particularly of the impugned notification fixing ex-factory prices in Punjab, Uttar Pradesh and North Bihar have been attacked. The Order in our opinion merely carries out the purposes of the Act and cl. 5 thereof gives the ambit of the powers of the Central Government in fixing prices, and lays down the manner in which it should be done and the factors which should be taken into consideration in doing so. Though in the petition, the Order was attacked on the ground that it gave 'uncontrolled, unguided and unfettered' power to the executive and imposed unreasonable restrictions on the right to carry on trade, no arguments were addressed to us on the constitutionality of the Order itself. We are in this case concerned only with that part of the Order which deals with the fixation of price. Clause 5 provides for factors that the Government will take into account in fixing prices and these are: (i) price or minimum price fixed for sugarcane, (ii) manufacturing cost, (iii) taxes, (iv) reasonable margin of profit for producer and/or trade, and (v) any incidental charges. It is amply clear from this that price is to be fixed after taking into account all reasonable factors which go into the consideration of price fixation. In view of this it cannot be said that the Order gives 'uncontrolled, unguided and unfettered' power to the executive to fix prices arbitrarily. We shall proceed therefore on the basis that the Act and the Order so far as they are concerned with the fixation of price are valid.

This brings us to the question whether the impugned notification is beyond the authority conferred on the Central Government by s. 3 of the Act and clause 5 of the Order. Reading s. 3 of the Act with the preamble, it would be obvious that the object of the Act is to provide for control of the production, supply and distribution of, trade and commerce in, essential commodities in the interests of the general public, so that the

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supplies of such commodities may be maintained or increased, their equitable distribution secured and they may be available to the general public at fair prices. Considering the history of sugar control and the trends which appeared in the market from April, 1958, it cannot possibly be said that the impugned notification does not subserve the purposes of the Act and the Order. There can be little doubt that fixation of ex-factory prices of sugar mills in the main surplus areas would have the effect of stabilising sugar prices for the general public, which is the consumer, at a fair level and make sugar available at fair prices. In the affidavit filed on behalf of the Government it is stated that as a result of this action prices have come down to normal levels. This is demonstrable proof, if such was needed, that the impugned notification subserves the purposes of the Act. This contention, therefore, fails.

*Re.* (*1*) (*b*).

The argument under this head is two-fold. It is said that in the first instance, s. 3 of the Act requires that prices for the consumer only should be fixed. The object of s. 3 is undoubtedly to secure essential commodities at fair prices for the general public, i.e., the consumer. It is well-known that there are three kinds of prices prevalent in the market for a commodity like sugar, namely, ex-factory price, wholesale price and retail price. It is the last that the consumer has to pay. It is urged that when s. 3 provides for availability of essential commodities at fair prices to the general public it means that price can only be fixed at the stage where the consumer is the purchaser. In particular, our attention was invited to clause (c) of s. 3 (2), which provides for control of price at which any essential commodity may be bought or sold. Now there is no doubt that the object of the Act is to secure essential commodities for the consumer, i.e., the general public, at fair prices; but it does not follow from this that this object can only be achieved if retail prices are fixed and that there is no other way of achieving it. In any case, clause (c) of s. 3 (2) which speaks specifically of control of price is very general

in terms. It provides for fixation of price at which any essential commodity may be bought or sold; it does not specify the stage at which the price should be fixed. Therefore, we are of opinion that the control provided under clause (c) of s. 3 (2) is control at any of the three stages mentioned above. There is no reason to cut down the generality of the words used in clause (c) so as to make them applicable only to the last stage, namely, the retail price. This contention, therefore, that s. 3 only authorises the Central Government to fix the retail price, i.e., the price for the consumer, fails.

It is then urged that even if the power is there to fix prices at all stages, the Act requires that the price must be fixed for the consumer, whether it is fixed at an earlier stage or not. There are no words in s. 3 (1) or s. 3 (2) (c) of the Act, which compel such an interpretation. It is true that the object of the Act is to ensure fair prices for the consumer; but if fair prices for the consumer can be ensured by fixing the ex-factory price, there is no reason why the Government should go on also to fix the wholesale or retail price. It is well-known that the wholesale and retail prices depend upon ex-factory price, in the case of a commodity like sugar. Therefore if fixation of price at the ex-factory level is enough to ensure a fair price for the consumer, there is no reason why the Government should not stop at that and should go on also to fix wholesale and retail prices. It is urged that the middleman who buys from the factory is not controlled and he can sell at any price; and, therefore, the object of the Act may not be achieved. Theoretically this may be so and a middleman may abuse his position. If he does so, we have no doubt that the Government will intervene as it has ample power to fix wholesale and retail prices also. But if the purpose is served by merely fixing the ex-factory price, we see no reason why the Government must fix wholesale and retail prices also. The petitioners have not even alleged that as a matter of fact the wholesalers and retailers are profiteering and making it impossible for sugar to be available for the general public at a fair

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price. In the circumstances, it was not necessary in fact for the Government to fix wholesale or retail prices. In law, we see no warrant for holding that under s. 3 (1) and s. 3 (2) (c) of the Act, the Government must not only fix ex-factory prices but also wholesale and retail prices. What prices the Government will fix depend upon their estimate of the situation, which would serve the object of the Act. We are, therefore, of opinion that there is no force in this contention either.

*Re.* (2).

The contention under this head is that the impugned notification is invalid as it is an unreasonable restriction on the petitioners' right to carry on trade under Art. 19 (1) (g). The argument is urged in three ways; namely, (i) factories are being compelled to sell at below the cost of production, (ii) the price fixed is arbitrary, and (iii) there is no safeguard against abuse of power. The argument that the factories are being compelled to sell at below the cost of production is put in two ways. It is said that the press note issued by the Government on July 30, 1958, shows that the Government was of the view that prices should be pegged at the level at which they were in the week preceding June 27, 1958, and inasmuch as they fixed prices below that level or even below the level at which they were at the end of May, 1958, the prices were below the cost of production. We must say that this is a complete misunderstanding of the press note of July 30, 1958. All that that press note said was that prices had risen even before June 27, 1958, in expectation of a large export quota. Thereafter, the Government were assured by the industry that prices would not rise further after June 27; but this assurance was not kept and prices went up further by one rupee per maund by the end of July. It was in these circumstances that the Government intervened. There was, however, no commitment in this press note by the Government that if they intervened they would fix prices at what they were either in the week before June 27, 1958, or in the last week of May; nor is there anything in the press note to suggest that the

prices prevalent on either of these two days were proper prices and that any price below them would not even meet the cost of production. The press note had nothing to do with the cost of production; nor were the Government bound to fix the prices at the level of the end of June or the end of May. When they eventually decided to intervene at the end of July, they were free to take action under the Act and the Order and so long as the prices fixed were in accordance therewith, the action could not be challenged on the ground that it was an unreasonable restriction on the right to carry on trade under Art. 19 (1) (g). Clause 5 of the Order lays down the factors which have to be taken into consideration in fixing prices. These factors include among other things a reasonable margin of profit for the producer and/or trade and any incidental charges. This was kept in mind when prices were fixed by the impugned notification. The petitioners have certainly filed with their affidavit a schedule giving the cost of production. According to them, their cost of production is above the price fixed by the impugned notification. This schedule has not been admitted by the Government. We see no reason to accept the *ipse dixit* of the petitioners as to their cost of production. The sugar crushing season begins about the end of October and finishes about the end of May, so that fixation of price in July, 1958, would be on the basis of the 1957-58 season. Market prices were available to the Government when they fixed the prices by the impugned notification. In the case of the three States, namely, Punjab, Uttar Pradesh and North Bihar, the prices fixed by the impugned notification were above the prices prevalent in the beginning of April and also above the average prices for the month of April, though in the case of Punjab and West Uttar Pradesh they were slightly below the prices of the 30th of April. These prices were prevalent in the free market and must certainly have taken account of a fair margin of profit for the producer, though in the case of an individual factory due to factors for which the producer might himself be responsible, the cost of production might have been a little more.

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Therefore, the prices fixed by the Government by the impugned notification can in no circumstances be said to have been proved to be below the cost of production. The petitioners were also not unaware of this state of affairs, and therefore, in the rejoinder came out with the story of distress sales by the mills in the early part of the crushing season. We are not impressed by this story, and in any case there could hardly be any question of distress sales in April when the crushing season was almost coming to an end. We see therefore no reason to hold that the prices fixed were below the cost of production and were therefore an unreasonable restriction on the petitioners' right to carry on trade under Art. 19(1)(g). This also disposes of the second ground of argument under this Head, namely, that the prices were arbitrary. All relevant factors prescribed under cl. 5 of the Order were apparently taken into consideration and the prices fixed themselves show that they were not arbitrary. The last argument in this connection is that there is no reasonable safeguard against the abuse of power and no check by way of appeal or otherwise is provided against the order of the Central Government. It is enough to say that we are here dealing with the power of the Central Government to fix prices in the interests of the general public. It is in these circumstances absurd to expect that there would be some provision by way of appeal or otherwise against this power of the Central Government. So long as the Central Government exercises its power in the manner provided by the Act and the Order—and this is what it appears to have done—, it cannot be said that any further safeguard is necessary in the form of an appeal or otherwise. The safeguards are to be found in cl. 5 itself, namely, that the Central Government must give consideration to the relevant factors mentioned therein before fixing the price, and thus these factors are a check on the power of the Central Government if it is ever-minded to abuse the power. We are therefore of opinion that the impugned notification is not an unreasonable restriction on the petitioners' right to carry on trade under Art. 19(1)(g).

*Re. (3).*

This raises the question of discrimination. It is said that price control is imposed on factories in Punjab, Uttar Pradesh and North Bihar and that there is no reasonable basis for such classification; factories in other parts of India are left uncontrolled with the result that there is discrimination. From the material supplied it appears that there are 97 sugar factories in Punjab, Uttar Pradesh and North Bihar while there are 50 sugar factories in the rest of India, of which as many as 18 are in the State of Bombay. In the other States there are very few factories, the lowest being in West Bengal, Orissa and Kerala with one factory each and the highest being in Madhya Pradesh with seven factories. We also understand that the major part of production of sugar in this country is from the factories in Punjab, Uttar Pradesh and North Bihar. Of the 97 factories which have been controlled, as many as 90 are in Uttar Pradesh and North Bihar and it is these two areas which are what are called mainly surplus areas. The price of sugar in India depends upon the price of the factories in Uttar Pradesh and Bihar. The contention of the Government is that as soon as the price is controlled in Punjab, Uttar Pradesh and Bihar the price for the whole of India is fixed, for other States are deficit and import sugar from these States, particularly Uttar Pradesh and North Bihar. In these circumstances if price is fixed in this area, price all over India is practically fixed, and it is not necessary to fix prices separately so far as factories in other States which are said to be mainly deficit, are concerned. In the circumstances we are of opinion, that though in form prices are fixed for factories only in Punjab, Uttar Pradesh and North Bihar, in effect they are fixed for the whole of India, once the production of these three regions is controlled. There is, therefore, in our opinion no discrimination in effect by the fixation of prices in these three regions. The argument that there is discrimination is purely theoretical, in view of the economic factors which control the price of sugar in this country. Thus in fact there is no discrimination after the control of sugar

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prices in these three regions and the contention that the factories in the other areas are left free to sell at any price is specious and does not merit a moment's consideration. We are therefore of opinion that in effect the impugned notification brought about no discrimination between different regions or between producers and middlemen in view of what we have said already in Re. 1 (b), and consequently, it is not necessary to consider the last part of the submission under this head. There is in fact no discrimination by the impugned notification and this contention fails on that ground.

There is no force therefore in this petition and it is hereby dismissed with costs.

*Petition dismissed.*

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*January 28.*

## BENGAL CHEMICAL & PHARMACEUTICAL WORKS LTD., CALCUTTA

*v.*

## THEIR WORKMEN

(P. B. GAJENDRAGADKAR, A. K. SARKAR and K. SUBBA RAO, JJ.)

*Industrial Dispute—Reference—Government, if empowered to transfer from one Tribunal to another—Award—If can be superseded by fresh agreement—Disputes referred on fresh agreement—Reference if bad—Industrial Disputes Act, 1947 (14 of 1947), ss. 2(r) and 7A. Industrial Disputes (Amendment and Miscellaneous Provisions) Act; 1956 (36 of 1956), s. 30—Industrial Disputes (Amendment) Act, 1957 (18 of 1957), s. 2.*

*Supreme Court—Scope of jurisdiction vis-a-vis the Award of Tribunal—Right of appeal—Constitution of India, Art. 136.*

Aggrieved by an Award of 1951, the employees placed before the Company a fresh charter of demands which was mutually settled by a written agreement which provided, inter alia, that the existing rate of dearness allowance should prevail which was adjustable to any future substantial change in the cost of living index of the working class. As the cost of living increased disputes arose, and in spite of the said Award of 1951,