

NEW INDIA SUGAR WORKS ETC. ETC.

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v.

STATE OF UTTAR PRADESH AND ORS.

February 27, 1981

[S. MURTAZA FAZAL ALI AND O. CHINNAPPA REDDY, JJ.]

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Retrospective operation of law—Order levying duty on Khandsari issued—Order, whether applies to existing stocks or only to future stocks—Price fixed less than manufacturing cost—Order, if liable to be quashed.

On the questions (1) whether an order imposing a levy on Khandsari could have retrospective operation so as to apply to sugar manufactured prior to the date of the order and (2) whether in fixing the price of levy sugar the Government should consider that the price fixed should be sufficient to cover the manufacturing cost.

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HELD : 1. It is not the question of retrospectivity of a statute but its actual working that is relevant. It is settled law that where a statute operates in future it cannot be said to be retrospective merely because within the sweep of its operation all existing rights are included. Once the notification for imposing the levy was made it will naturally apply to the existing stocks of khandsari with the petitioners irrespective of whether it was manufactured before or after the order. [31B; 30G]

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2. The policy of price control has for its dominant object equitable distribution and availability of the commodity at fair price to benefit the consumers. Individual interest, however precious, must yield to the larger interest of the community namely the consumers. Even if the petitioners have to bear some loss there could be no question of the restrictions imposed on them being unreasonable. [32 B]

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The fixation of price would be in the interest of consumers rather than that of the producers. Moreover since the petitioners were allowed to sell freely at any rate they liked, the remaining 50% of sugar after excluding the 50% which they had to give to levy as also the produce by the second and third processes, the loss, if any, caused to the petitioners, would be minimal. [32 G]

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ORIGINAL JURISDICTION : Writ Petition Nos. 896/81, 865-890, 577-591, 592-606, 607-621, 622-628, 629-633, 634-37, 964-88, 544, 545-575, 766-774, 775-776, 902-63, 897-901, 535-37, 532-34, 529-531, 639 and 540-43/81.

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(Under Article 32 of the Constitution)

H.K. Puri for the Petitioners in WP 896/81.

Vimal Dave for the Petitioners in WPs 865-890/81.

A.K. Sen, R.M. Dube and Sarva Mitter for the Petitioners in WPs 540-43/81.

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A *Soli J. Sorabjee, S.S. Ray, A.K. Sen and R.K. Jain* for the Petitioners in WPs 529-37, 544-575, 577-638, 766-776 and 897-988/81.

S.S. Ray, Soli J. Sorabjee and R.K. Jain for the Petitioners in WPs 634-37/81.

B *Lal Narain Sinha, Attorney General, O.P. Rana, and Mrs. S. Dikshit* for the Respondent (State of U.P.) in WPs 540-43, 529-37, 540-43, 544-77 and 577-638/81.

M.K. Banerjee Addl. Sol. Genl. and *S.K. Gambhir* for the State of Madhya Pradesh.

Miss A. Subhashini for Union of India.

C The Order of the Court was delivered by

FAZAL ALI, J. Having heard counsel for the parties at great length we are satisfied that there is no violation of the fundamental right of the petitioners enshrined in Art. 19(1)(g) of the Constitution of India nor is Art. 14 attracted to the facts of the present case.

D There is, therefore, no good ground to entertain the petitions. We would, however, like to add that on the materials placed before us the Government may consider the desirability of adopting such measures as may soften the rigours of the impugned orders which, though not arbitrary or excessive so as to violate Art. 14 or 19, do merit some consideration by the Government in order to effectuate the policy under which the impugned notification was made.

E There are, however, two arguments urged before us which need special mention. In the first place it was submitted that in the U.P. cases the order impugned imposing a levy on the khandsari produced by the petitioners cannot have any retrospective operation so as to apply to the stock of sugar manufactured prior to the date of the order and would apply only to the sugar produced after the coming into force of the impugned notification. So far as this argument is concerned we find no substance in the same because it is not a question of retrospectivity of the statute but its actual working. Once the notification imposing the levy was made it will obviously apply to stock of khandsari produced by the petitioners either before or after the order. This principle has been clearly laid down by the Constitution Bench of this Court in the case of *Trimbak Damodar Raipurkar v. Assaram Hiraman Patil and Ors.*⁽¹⁾ where Gajendragadkar, J. speaking for the Court regarding the

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(1) [1962] Supp. 1 S.C.R. 700.

scope of a Rent Act and Amendment in Rent Act observed as follows :

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“In this connection it is relevant to distinguish between an existing right and a vested right. Where a statute operates in future it cannot be said to be retrospective merely because within the sweep of its operation all existing rights are included.”

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This Court followed the dictum of Buckley, L.J. in the case of *West v. Gwynne*.⁽¹⁾ In the aforesaid case Buckley, L.J. while construing an amendment in the Act by which the contract was governed observed as follows :—

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“The Act of 1881 thus expressed that in the case of leases made either before or after the commencement of the Act a covenant not to assign without licence should be enforceable just as before..... This section is to be read as if it were contained in the Act of 1881, and is dealing with a subject-matter mentioned in the Act of 1881, and as to which there is in that Act a provision that the enactment shall apply to leases made either before or after commencement of the Act.”

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Hardy, M.R. in a concurring judgment while construing second amendment in section 14 of the Conveyancing Act pointed out thus :—

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“In the first place, the language of the section is perfectly general, “in all leases,” and there is nothing in the section itself to confine it to leases subsequent to the Act.

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Almost every statute affects rights which would have been in existence but for the statute.”

In these circumstances, therefore, once the notification for imposing the levy was made it will naturally apply to the stock of sugar which was with the petitioners irrespective of the fact that it was manufactured before or after the Order.

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It was next strongly contended that in fixation of the price of levy sugar the Government has not taken into consideration the fact that the petitioners would undergo a serious loss because the price would not be sufficient even to cover their manufacturing cost. We

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(1) [1911] 2 Ch.D. 1.

A are, however, unable to agree with this argument. The policy of price control has for its dominant object equitable distribution and availability of the commodity at fair price so as to benefit the consumers. It is manifest that individual interests, however, precious they may be must yield to the larger interest of the community namely, in the instant case, the large body of the consumers of sugar. In fact, even if the petitioners have to bear some loss there can be no question of the restrictions imposed on the petitioners being unreasonable. In *Shree Meenakshi Mills Ltd. v. U.O.I.*⁽¹⁾ this Court observed as follows :

C “If fair price is to be fixed leaving a reasonable margin of profit, there is never any question of infringement of fundamental right to carry on business by imposing reasonable restrictions.

D In determining the reasonableness of a restriction imposed by law in the field of industry, trade or commerce, it has to be remembered that the mere fact that some of those who are engaged in these are alleging loss after the imposition of law will not render the law unreasonable.” (Emphasis Supplied)

Similar view was taken by this Court in the case of *Prag Ice and Oil Mills and Anr. etc. v. Union of India*⁽²⁾ where the Court speaking through Beg, C.J., observed as follows :

E “It has also to be remembered that the object is to secure equitable distribution and availability at fair prices so that it is the interest of the consumer and not of the producer which is the determining factor in applying any objective tests at any particular time.”

F In this view of the matter the primary consideration in the fixation of price would be the interest of the consumers rather than that of the producers. Moreover, we think that since the petitioners are allowed to sell freely at any rate they like the remaining fifty per cent of sugar (after excluding the fifty per cent which they have to give for levy) as also the produce by the second and third processes, the loss if any caused to the petitioners would be minimal.

G Lastly, it was urged that Sub-Clause (5)—which is Sub-Clause (3) in the notification issued by the Madhya Pradesh Government—

in the impugned notification issued by the U.P. Government is extremely arbitrary inasmuch as by insisting on certificates it deprived the petitioners of the free sale of sugar of the remaining amount of fifty per cent as also the Khandsari produced by second and third processes. We see some force in this argument but the Attorney General frankly conceded that he will see that no inconvenience on this score is caused to the petitioners. He gave an undertaking to the Court that he will get the respective Sub-Clauses 5 and 3 of the impugned orders of the U.P. and Madhya Pradesh Governments deleted or withdrawn so as to allow the petitioners to sell the remaining amount of sugar as also the stock produced by the second and third processes without any hitch or hindrance. This will, however, be subject to routine and quick inspection. In view of this undertaking, therefore we feel that a substantial part of the grievances of the petitioners would be removed. To be on the safe side, however we allow the stay granted in all the petitions to continue until the provisions of respective Sub-Clauses 3 and 5 passed by the State Governments concerned are withdrawn.

We may also emphasise the fact that the amount of sugar taken by the Government through levy should be properly stored and duly protected from rain and rot and be despatched to the various control depots expeditiously in order to ensure a quick and equitable distribution of the commodity amongst the people at moderate rates.

The Government may also consider the desirability of giving a bare minimum hearing to the representative of the owners of the cane crushers in future before fixing the rate at which the levy is taken from the owners so as to see that the owners of the crushers are not put to such great loss that they are completely wiped out from business.

With these observations the petitions are dismissed.

N.K.A.

Petitions dismissed.