

SUPREME COURT OF INDIA

Oudh Sugar Mills Ltd.

Vs.

Union of India

C.A.No.1530-1532 of 1969

(J. C. Shah and K. S. Hegde, JJ.)

28.03.1962

JUDGEMENT

HEGDE, J.:-

1. In these appeals by certificate just one question arises for decision and that question is whether the Central Government was justified in refusing extension of time to the appellants to clear sugar released for sale in the open market?

2. The Appellants (Companies incorporated under the Indian Companies Act) carry on business inter alia of producing, manufacturing and selling sugar. They have their factories either in Uttar Pradesh or in Bihar. By a notification dated June 10, 1966 the Central Government in exercise of the powers conferred on it by Section 3 of the Essential Commodities Act, 1955 (Act X of 1955) promulgated the Sugar (Control) Order, 1966. Clause 4 of that Order restricted the sale of sugar by producers. It reads:

"No producer shall sell or agree to sell or otherwise dispose of sugar or deliver or agree to deliver sugar, or remove any sugar from the bonded godowns of the factory in which it is produced, except under and in accordance with a direction issued in writing by the Central Government or the Chief Director."

By order dated November 16, 1967, the Sugar (Control) Order, 1966 was amended and the above-mentioned clause 4 was substituted by the following clause:-

"The Central Government may direct that no producer shall sell or agree to sell or otherwise dispose of, or deliver or agree to deliver any kind of sugar or remove any kind of sugar from the bonded godowns of the factory in which it is produced, except under and in accordance with a direction issued in writing by the Central Government."

On August 16, 1967, the Minister for Food and Agriculture announced the sugar policy for 1967-68. According to that policy quantity equal to 60 per cent of the production achieved in every factory from October 1, 1966 to September 30, 1967 will be procured from each of them at a fixed levy price. Factories will be free to sell the balance of their production at the free market price subject to releases sanctioned by the Government of India. A press note dated October 21, 1967, was issued announcing the above policy. By notification No. 1750/ESS.Com/Sugar dated November 20, 1967 the powers conferred by clauses inter alia 4 and 5 of the Sugar (Control) Order 1966 are made

exercisable by the Chief Director or Director in the Directorate of Sugar and Vanaspati Ministry of Food, Agriculture Community Development and Co-operation (Department of Food).

3. In exercise of the powers conferred by clause 5 of the Sugar (Control) Order, 1966 read with aforesaid notification dated 20th November 1966, Respondent No. 2, the Director issued release orders dated December 23, 1967 whereby he permitted the appellants to sell the quantity of sugar mentioned in each one of those orders in the open market. Those orders were received by the appellants on the 27th December, 1967. Thereunder they were required to dispose of sugar released for sale in the open market on or before January 22, 1968. Immediately after receiving the order, the appellants entered into contracts with the dealers for the sale of sugar. They also applied for railway wagons for transport of that sugar to the States outside their own. Most of the Sugar released for open sale was removed from their godowns within the time prescribed but each of the appellants was not able to put into open market a fraction of the sugar released for sale in the open market as the railway wagons were not made available to them in time due to some difficulty or other on the part of the Railways.

4. It is satisfactorily proved that the appellants have taken every possible step to dispose of the sugar released for sale in the open market immediately after they received the release orders. If they have not been able to dispose of some portion of the sugar released, it is not due to any fault of theirs. It is entirely due to circumstances beyond their control.

5. It is admitted by the respondents that a decision had been taken to give the producers 30 days time for disposal of the sugar released for sale in the open market. It is proved that in the case of the appellants only 26 days had been given for the disposal of that sugar.

6. It must be remembered that right to trade is a guaranteed freedom. That right can be restricted only by law, considered by the Courts as reasonable in the circumstances. Not only the law restricting the freedom should be reasonable, the orders made on the basis of that law should also be reasonable. It is clear that the sugar released for sale in the open market will have to be ordinarily sent out of the States in which they are produced. For doing so, the concerned producers will have to enter into contracts with dealers at far off places. Thereafter the sugar will have to be transported to places of disposal mainly through railways. Taking all the circumstances into consideration, we do not think that the period of 30 days given for disposal of the sugar is in any manner generous. That being so, we are clearly of the opinion that the 26 days time given to the appellants for the disposal of the sugar cannot be considered as reasonable. We think that the second respondent unreasonably rejected the appellants' request to extend the time for the disposal of the sugar released for sale in the open market. He appears to have acted mechanically.

7. For the reasons mentioned above we allow these appeals and direct the respondents (in accordance with the orders made in these appeals on June 6, 1969) to release to the appellants an equivalent quantity of sugar for free sale out of the appellants' quota of levy sugar for the season 1968-69 in lieu of the sugar that they had to surrender from out of the quota released to them for sale in the open market for the year 1967-68. The appellants are entitled to their costs both in this Court as well as in the High Court.

Appeals allowed.