

The Newabganj Sugar Mills Co. Ltd.

Vs

The Union of India and Others

Civil Appeals Nos. 1186 to 1201 of 1975

(V.R. Krishna Iyer, Syed M. Fazal Ali JJ)

16.09.1975

JUDGMENT

KRISHNA IYER, J. -

1. We should have made short shrift of this batch of appeals on the brief but fatal ground that the appellants - all sugar millers who had overpriced this essential consumer article and had failed in their challenge of the controlled price - had no moral nor legal claim to keep the huge sums which the High Court had rightly directed them to disgorge. When the price of 'levy sugar' was pegged down by the State, these factory owners rushed to the court impeaching the validity of the control and secured a stay of operation of the order. Under cover of the court's stay order which was granted, on bank guarantee for the excess price being furnished to the court, the appellants sold sugar at free market rates - a euphemism for black-market racket - unfortunately, with judicial sanction. Crores of rupees were admittedly funnelled into the millers' tills. But, eventually, the High Court upheld the control of price and the unhappy obligation to restore the unjust enrichment arose. The High Court, whose process kept the control price in cold storage, had to do justice by the community of consumers who were the unwitting victims of this judicially declared holiday from control which was quickly converted into a fleece-as-please seller situation. And so the Court made the following direction :

We, therefore, direct that the Registrar will take immediate steps to encash the security and recover the amount so overcharged by the petitioners and pay the same to the State Government which will keep it in a separate account. The petitioners will furnish to the State Government, within a period of six weeks of this order, a list of all such persons to whom they sold the levy sugar of 1971-72 season, together with their addresses, quantity of such sugar sold to and the amount of excess price charged from each of them. The State Government will then refund to the persons concerned the excess amount realised from each of them, if necessary, after verifying the claim for refund of such amount made by such persons.

2. The reluctant millers have sought and got leave to appeal against this just direction and in the course of arguments have made some suggestions about the disposal of the moneys. The inarticulate assumption was, presumably, that crores of rupees could remain with them until a suitable scheme for percolation of the excess prices to the ultimate small buyer could be fashioned. Indeed, at some stage, a hesitant proposal was made that since the sugar industry has allegedly had lean years, these considerable sums 'picked' from the pockets of a considerable number of consumers had better be allowed to be retained by the millers. Another diffident hint was made that these several crores of rupees be used for stabilising the sugarcane growers' economic position. The easy-to-see-through design behind these 'developmental' ideas was to have use of this large windfall till some distant

project was evolved.

3. Indubitably, the appellants are in unrighteous enjoyment of colossal sums which belong to small consumers. Not a moment more can the millers keep what the Court has ordered the Registrar to collect by enforcing the bank guarantees. Indeed, they have had dubious business use of these vast sums for a few years - nearly a year, even after the High Court's final judgment. Once we disenchanted them, as arguments proceeded, that the conscience of the Court would unconditionally compel the money to be called in forthwith, their interest in making fertile *pro bono publico* suggestions as to how best to organise the disbursement of the small sums to the actual buyers flagged and later in the day, Shri Dadachanji, Advocate-on-record in these cases, even moved that if leave had not been formally granted, the special leave petitions be allowed to be withdrawn and if leave had been already granted, court fee exemption for these many appeals may be directed. This shows up the public concern of these sugar manufacturers. Anyway, the Registrar of the High Court shall take immediate steps to encash the security furnished by the appellants. The money of the many little men gotten by the few millers by selling an essential commodity to the community at what is frankly blackmarket price under the umbrella of court order of stay shall get back to the scattered crowd of small consumers as early and as inexpensively as possible. A public injury perpetrated by calling in aid court process must quicken judicial conscience to improvise an ad hoc procedure to restore through the court's authority what has been nibbled from the numerous buyers. Innovative realism is obligated on the court on the broad basis *actus curiae neminem gravabit*. Why did the buyers pay higher prices for levy sugar? Because, they respected the High Court's order.

4. In this justice situation conventional procedures of each small claimant being left to litigate for a little sum from the miller or wholesaler is to write off the remedy and allow the ill-gotten wealth to be in the coffers of the wrongdoer (who got the charter to charge high from a court order). Nor is the seemingly sweet suggestion, that a representative action under Order 1, Rule 8, C.P.C., be instituted on behalf of the class of consumers, feasible. Who is to start? Against whom? How is he to meet the huge litigative costs and how long (O Lord, how long!) is he to wait with long-drawn-out trial procedures, appeal, second appeal, special appeal, and Supreme Court appeal? For, on the other side is the miller with the millions to be coughed up!

5. The handling of small claims is probably the most deplorable feature of the administration of civil justice and yet small claims are in many respects more significant than large ones, involving large numbers and inter-class disputes. If the confidence of the community in the justice system, especially consumer protection, is to be created, radical reform of the processual law is needed now and here.

6. Rejecting, therefore, the recommendations for solution of the problem arising here, as put forward by Counsel for the appellants, we have to devise other measures. We are aware of our limitations:

The judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to 'the primordial necessity of order in social life'. Wide enough in all conscience is the field of discretion that remains. (Benjamin Cardozo's 'The Nature of the Judicial Process', Yale University Press (1921)).

The difficulty we face here cannot force us to abandon the inherent powers of the Court to do."The inherent power has its roots in necessity and its breadth is coextensive with the necessity". (Theoretical Basis of Inherent Powers Doctrine - Text material prepared by Jim R. Carrigan - Publication of National College of The State Judiciary, USA). Certainly, we cannot go against any statutory prescription. Had India had a developed system of class actions or popular organisation taking up public interest litigation, we could have hoped for relief otherwise than by this Court's order. We lag in this regard, although people are poor and claim are individually trivial. Legal aid to the poor has a processual dimension. As things stand, if each victim were remitted to an individual suit, the remedy could be illusory, for the individual loss may be too small, a suit too prohibitive in time and money and the wrong would go without redress. If there is to be relief, we must construct it here by simple legal engineering.

7. The Solicitor General, appearing for the State of U. P. and the Union of India, informed us that legislation was about to be enacted to take care of these situations. If it did come, it were welcome. After all, the Legislature must show better legal concern for the small man, as this class of consumers who are wronged or deceived are on the increase.

8. In the present case, we think that the following complex of directions will pragmatically meet the needs both of the appellants and the range of buyers from whom higher prices were charged :

A. The security by way of bank guarantee furnished by every appellant will be encashed by the Registrar of the High Court and kept in short-term deposit in the State Bank of India.

B. The appellants will be given complete immunity from liability to any sugar buyer, wholesaler or other, to who sugar has been sold by the appellants at higher prices during the period covered by the High Court's stay order. If any exceptional case of claim were to be made by any buyer, it should be done by motion before the High Court which will be justly disposed of.

C. The Registrar, under orders of the High Court, will directly or by making over to the State Government, receive and dispose of claims from the ultimate consumer for excess price paid on proper proof. If the State is to undertake this task, a proper, easy and cheap machinery for distribution to the real, last buyer will be produced before the High Court and orders obtained. The process should not be too expensive or too formalised.

D. Wide publicity will be given about the project and method of returning small claims and the money sent by post or otherwise. The claims also would be received by post or otherwise and verified without delay.

E. The interest accruing from the bank deposits will be used for the incidentals to work out the distribution.

F. It will be open to the wholesaler to prove by vouchers the retailers and the latter in turn may prove who the ultimate buyers are. The High Court may devise modifications of this scheme or direct the State Government to act on any scheme

subject to the moneys reaching the real small buyers from the retailers.

G. If any further directions in the mechanics of the scheme are felt necessary, the High Court will report to this Court.

H. If, within one year from today, any amounts remain unclaimed they will go into a separate deposit in the High Court to be operated on application by any claimant.

I. If any legislation dealing with this subject were to be made before the amounts are disbursed, the legislative scheme will pro tanto prevail over the directions given above.

J. The Court fee on these civil appeals will be exempted in the special circumstances of the case.

K. Parties will bear their own costs in this Court.

9. Maybe, the procedure we have suggested above is somewhat unconventional but where public interest is involved, courts, of equity may, and frequently do, go much further both to give and withhold relief in furtherance of the public interest than they are accustomed to go where only private interest are involved. Accordingly, the granting or withholding of relief may properly be dependent upon considerations of public interest. (27 Am Jur 2d, Equity, p. 626). 10. We hope the vigilant Legislature will activate itself on behalf of the little man and the law and make quickmoving, easily accessible and free-of-cost consumer protection measures. Slogans are not law and the rule of law in a welfare-oriented constitutional order demands 'poverty' law none too soon; with emphasis on the delivery of legal services with distances shortened and road hazards removed. It is not for the Court to spell out more, but it is for the State to awaken to an overlooked, but not infrequent, legal phenomenon.

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