Shri Sitaram Sugar Company Limited and Another

Vs

Union of India and Others

With

U. P. State Sugar Corporation Ltd. and Another

Vs

Union of India and Others

Writ Petition Nos. 464 and 617 of 1977

(Sabyasachi Mukharji, K. Jagannatha Shetty, Dr. T. K. Thommen, A. M. Ahmadi, K. N. Saikia JJ)

13.03.1990

JUDGMENT

THOMMEN, J -

1. The petitioners are owners of sugar mills operating in the State of Uttar Pradesh in areas classified for the purpose of determining the price of levy sugar as West and East zones. They challenge the validity of notifications dated November 28, 1974 and July 11, 1975 (Annexures 8 and 9) issued by the Central Government in exercise of its power under sub-section (3-C) of Section 3 of the Essential Commodities Act, 1955 (Act 10 of 1955), as amended to date, (hereinafter referred to as the 'Act') Published in the Gazette of India, Extraordinary, dated November 28, 1974 and July 11, 1975)). The petitioners do not, and cannot, challenge the validity of the sub-section by reason of Article 31-B of the Constitution of India. By the impugned orders, the Central Government fixed the prices of levy sugar for 1974-75 production. For the purpose of determining the prices, the country is divided into 16 zones, and the prices fixed for various grades of sugar in terms of Section 3(3-C) of the Act vary from zone to zone. Prices are determined with reference to the geographical-cum-agro-economic considerations and the average cost profiles of factories located in their respective zones. Each State for this purpose constitutes a separate zone, while U.P. is divided into 3 zones and Bihar into 2 zones. The petitioners contend that these orders are ultra vires the Act and violative of their fundamental rights as the prices of levy sugar have been determined arbitrarily with reference to the average cost profiles of factories grouped together in zones without regard to their individual capacity and cost characteristics. Such prices do not reflect the actual manufacturing cost of sugar incurred by producers like the petitioners or secure to them reasonable returns on the capital employed by them. Geographical zoning, for the purpose of price fixation, they point out, is an irrational and discriminatory system of averaging wide cost disparities amongst producers of widely varying capacity. Cost of manufacture of sugar depends on a number of factors, such as recoveries from the sugarcanes, duration of the crushing season, crushing capacity of the plant, the sugarcane price paid and the capital employed in the manufacture of sugar. These factors vary from factory to factory. Fixation of the levy sugar prices on zonal basis without regard to these divergent factors and the comparative cost profiles gives the owners of bigger factories an undue advantage over

producers like the petitioners whose factories are comparatively of lower crushing capacity and whose manufacturing cost is consequently higher. Clubbing of the petitioners' factories with dissimilar factories in the same zone for the purpose of price fixation is discriminatory, arbitrary and unreasonable. The petitioners point out that the system of geographical zoning for the purpose of price determination has been severely criticised by the Bureau of Industrial Costs & Prices (the "BICP") who have strongly recommended the division of the sugar industry into groups of units groups of units having similar cost characteristics with particular reference to recovery, duration, size and age of the unit and capital cost per tonne of output, and irrespective of their location.

2. The respondents, on the other hand, contend that the classification of sugar industry into 15 zones (now 16) was upheld by a Constitution Bench of this Court in Anakapale Agricultural & Industrial Society Ltd. v. Union of India ((1973) 3 SCC 435 : (1973) 2 SCR 882). The contention that the zonal system was discriminatory and violative of constitutional principles was pointedly urged, but categorically rejected by this Court. The method adopted by the government in fixing the price of levy sugar is fully supported by the recommendations of various expert bodies. The Tariff Commission in its 1973 Report recommended division of the country into 16 zones for this purpose. The price of sugar is fixed with reference to the Cost Schedule recommended by that body. These recommendations are based on various factors such as cost and output of individual labour, cane price (accounting for about 70 per cent of the cost of sugar production), quality of sugarcane, taxes on sugarcane, cost of other material, transport charges, cost of storing the sugar produced, cane development charges and other overhead expenses, selling expenses etc. These factors are almost identical for the entire zone.

3. The cost of manufacturing sugar, the respondents contend, depends not only on recovery from the sugarcane, duration of crushing season, crushing capacity of the plant, the sugarcane price paid and the capital employed, as stated by the Petitioners, but also a considerable extent on the condition of the plant and machinery, quality of management, investment policy, relations with cane growers and labour, financial reputation etc. They say :

> "It is evident from the Tariff Commission Report of 1959, as also the Official Directory of the Bombay Stock Exchange, that the petitioner Company has been consistently diverting huge amounts for investments running into several lakhs elsewhere instead of ploughing back the same into petitioner's sugar industry in question. Thus, the petitioner Company has been neglecting the sugar factory and for such neglect of their own they cannot blame the zonal system."

4. Mr. Shanti Bhushan, appearing for the petitioners, does not object to the factories being grouped together on the basis of factors common to them with a view to fixing the prices applicable to them as a class of producers. He does not advocate fixation of price separately for each unit. He says that the sugar factories must be grouped together, not on the basis of their geographical location, but similarity in cost characteristics. He relies upon the 1976 Report of the BIPC. The Present system of fixing prices to fixing prices according to the regions where the factories are located, he says, is based on "averaging wide cost disparities" as a result of which manufactures like the petitioners incurring a high cost of production and others incurring a low cost of production are treated alike. Such a system works to the disadvantage of the former and to the advantage of the latter. This, Mr. Shanti Bhushan Contends, is an unreasonable and invalid classification and violative of constitutional principles. While this line of argument is supported by Mr. Raja Ram Aggarawal, Mr. S. P. Gupta appearing for the intervenor in Civil Writ Petition No. 464 of 1977 advocates abolition of zonal classification or grouping of any kind and supports and regardless of any other

consideration. Such unitwise determination alone, according to him, satisfies the requirements of Section 3(3-C). Any system of zoning or grouping for determination of Price, he contends, will fail to meet the norms of that sub-section Mr. M. M. Abdul Khader, on the other, hand, submits, that while averaging and costing with reference to a representative cross-section may ordinarily be an appropriate method for determining the fair price, such a method is inappropriate for a small zone like Kerala where there are only three manufacturing units. In respect of such a zone, he says unitwise fixation of price is the only just and proper method.

5. Mr. K. K. Venugopal, counsel for Indian Sugar Mills' Association (ISMA), on the hand supports the zoning system. He says that, except for a few producers like the petitioners, all the rest of them in the country have accepted the principle of zoning. In his written submissions. Mr. Venugopal states as follows :

> "As was seen during the course of hearing only 2 to 3 persons have come forward challenging zoning. There are 389 sugar factories in the country and the present intervened has 166 members. Besides there 220 members with the cooperative sector. Their association being National Federation of Cooperative Sugar factories Ltd., has also intervened in these petitions and have adopted the arguments of ISMA. Hence almost the entire industry has supported zoning and only a handful of people who also factually are not high-cost units have opposed zoning."

Mr. Venugopal submits that the present case is squarely covered by the decisions of this Court in Anakapalle Cooperative Agricultural & Industrial Society Ltd. v. Union of India ((1973) 3 SCC 435 : (1973) 2 SCR 882) and Panipat Cooperative Sugar Mills v. Union of India ((1973) 1 SCC 129 : (1973) 2 SCR 860). He says that the petitioners have not made out a case for reconsideration of these two decisions. He refers to T Govindaraja Mudaliar v. State of Tamil Nadu ((1973) 1 SCC 336, 343 : (1973) 3 SCR 222, 228-30) and submits that this Court would not re-examine an earlier decision merely because certain aspects of the question had not been noticed in that decision. Mr. Venugopal, however, advocates neutralisation of the high cost incurred by the old units having lower crushing capacity by giving them an incremental levy prices as recommended by the High Level Committee in 1980.

6. Before we examine the provisions of Section 3(3-C) in the context of the general scheme of the Act, we shall briefly refer to the observations of this Court in Anakapalle ((1973) 3 SCC 435 : (1973) 2 SCR 882) and Panipat India ((1973) 1 SCC 129 : (1973) 2 SCR 860).

7. Grover, J. speaking for the bench in Anakapalle ((1973) 3 SCC 435 : (1973) 2 SCR 882) states : (SCC pp. 444-45, para 15)

> "The system of fixing the prices, according to certain regions or zones, is not a new one. The Tariff Commission in 1959 favoured the formation of four zones. In the report of the Sugar Enquiry Commission, 1965 it was pointed out that the government had actually fixed the prices for 22 zones which meant that from four zones the number had been increased to twenty-two or more. The Commission was of the view that there should be five zones only in addition to Assam. The Tariff Commission 1969, however recommended the constitution of fifteen zones largely on Statewise basis with an exception only in case of Uttar Pradesh and Bihar. Uttar Pradesh was divided into three zones and Bihar into two. The Tariff Commission had been specifically requested to inquire into the working of the zonal system, the main

> point for inquiry being the zones into which the sugar products should be grouped having regard to the basis of the classification to be recommend by the Commission. The view of the Commission was that on the whole the number of price zones should be fifteen which would reduce, though not eliminate, the inter se anomalies in the cost structure without resorting to the extreme of the fixation of price for each unit or a single or at the most two, one far the sub-tropical and other for the tropical one. The Tariff Commission hoped that in the Course of time conditions would be created making the operation of the second alternative feasible."

8. Rejecting the contention that it was the zonal system that caused the losses allegedly incurred by some of the sugar producers, Grover, J. says that ordinarily these units ought to have made profits. The reasons for incurring losses can be many, such as inefficiency, failure to pursue the right policy, poor management and planning, etc. but these reasons have relation to the zonal system. That system by and large has led to efficiency and provides an incentive to cut down the cost. Healthy competition among the units in the same zone should in the normal course result in reduction of cost and greater efficiency in the operation of the units. It is proper management and planning that would lead to the success of any commercial venture. The contention of the producers that they have been incurring losses on account of the zonal system is opposed to the evidence produced by them. The court has rejected the extreme contention that prices should be fixed unitwise, i.e. on the basis of actual cost incurred by each unit. Referring to this contention, this Court observes : (SCC p. 446, para 17)

> "A part from the impracticability of fixing the prices for each unit in the whole country the entire object and purpose of controlling prices would be defeated by the adoption of such a system."

9. Grover, J. states that, during the earlier period of price control, it was on an all India basis that the price was fixed. That is still the objective. If such an objective is achieved, it would undoubtedly be conducive to conferring proper benefit on the consumers. The objective of the Tariff Commission is to have only two regions for the whole, county, viz., sub-tropical.

10. The court has rejected as baseless the criticism against the principle of weighted average adopted in the fixation of price in each zone. Such a principle is well recognised and acted upon by various Sugar Enquiry Commissions. A proper cost study is intended to do justice to the weak and strong alike. There is abundant justification for continuing and sustaining the zonal system. The varying climatic conditions of each State have been taken into account. For the same reason, Bihar is divided into 2 zones and U.P. into 3 zones, while in the case of many other States each State is treated as a single zone. This system of zoning is thus adopted with special reference to climatic and agro-economic conditions. Rejecting the contention that the zonal system has resulted in discriminatory treatment, this Court states : (SCC p. 450, para 27)

> "We are unable to hold that while classifying zones on geographical-cum-agro-economic consideration, any discrimination was made or that the price fixation according to each zone taking into account all the relevant factors would give rise to such discrimination as would attract Article 14 of the Constitution."

Even if there is no price control, the uneconomic units would be at a great disadvantage. The Court states : (SCC p. 450, Para 28)

> "Even if there is no price control each unit will have to compete in the market and those units which are uneconomic and whose cost is unduly high will have to compete with others which are more efficient and the cost of which is much lower. It may be that uneconomic units may suffer losses but what they cannot achieve in the open market they cannot insist on where price has to be fixed by the government. The Sugar Enquiry Commission in its 1965 report expressed the view that "cost-plus" basis of price fixation perpetuates inefficiency in the industry and is, therefore, against the long-term interest of the country."

Considering the general principle involved in price fixation, the court states : (SCC p. 451, para 31)

> "It is not therefore possible to say that the principles which the Tariff Commission followed in fixing the prices for different zones are either not recognised as valid principles for fixing prices or that simply because in case of some factories that actual cost was higher than the one fixed for the zone in which that factory was situate the fixation of price became illegal and was not in accordance with the provisions of sub-section (3-C). It has not been denied that the majority of sugar producers have made profits on the whole and have not suffered losses. It is only some of them which assert that their actual cost is far in excess of the price fixed. That can hardly be a ground for striking down the price fixed for the entire zone provided it has been done in accordance with the accepted principles."

The court concludes : (SCC p. 453, para 34)

> "When prices have to be fixed not for each unit but for a particular region or zone the method employed by the Commission was the only practical one and even if some units because of circumstances peculiar to them suffered a loss the price could not be so fixed as to cover their loss. That cannot possibly be the intention of Parliament while enacting sub-section (3-C) of Section 3 of the Act. If that were so the price fixation on zonal or regional basis would have to be completely eliminated. In other words the entire system of price control which is comtemplated will break down because fixation of price each unit part from being impractical would have no meaning whatsoever and would not be conducive to the interest of the consumer."

11. This court has thus in Anakapalle ((1973) 3 SCC 435 : (1973) 2 SCR 882) rejected the argument that the alleged loss incurred by certain sugar producers is attributable to fixation of price on a zonal basis; or the zonal system has led to inefficiency or lack of incentive, or it has resulted in unequal or unfair treatment. On the other hand, the zonal system has encouraged a healthy competition amongst the units in the same zone. Unitwise fixation is impracticable. The Tariff Commission is the best judge is selecting units for cost study to determine the average cost. The fair price has to be determined with reference to the conditions of a representative cross-section of the industry. For all these reasons there is ample justification in continuing and sustaining the zonal system for the purpose of price fixation. Price has to be fixed for each zone and necessarily it varies from zone to zone. There is no discrimination in the classification of zones on a geographical-cum-agro-economic consideration and such classification is perfectly consistent with the principle of equality.

12. In Panipat ((1973) 1 SCC 129 : (1973) 2 SCR 2 SCR 860), Shelat, J. speaking for the same Constitution Bench that has decided Anakapalle ((1973) 3 SCC 435 : (1973) 2 SCR 882) refers to the norms adopted in sub-section (3-C), viz., (a) determination by the government of the "price of

sugar", and (b) payment of "an amount" to the manufacturer, and states that the concept of fair price which is what is referred to in sub-section (3-C) as "price of sugar" does not by any account mean the actual cost of production of every individual manufacturer. Such price has to be arrived at by a process of costing with reference to a representative cross-section of the manufacturing units. He states : (SCC p. 143, para 30)

> "The basis of fair price would have to be built on a reasonably efficient and economic representative cross-section on whose working cost-schedules would have been worked out and the price to be determined by government under sub-section (3-C) would have to be unit."

So Stating, Shelat, J. rejects the contention that such price has to be determined unitwise. Any such fixation of price, he points out, would be contrary to the concept of partial control postulated by the sub-section and would perpetuate inefficiency and mismanagement. But of course, any such price, he hastens to add, has to be fixed reasonably and on relevant considerations. Referring to the partial control, Shelat, J. States : (SCC p. 142, para 28)

> "..... the Central Government was confronted with two main problems : (a) deterioration in the sugar industry, and (b) the conflicting interests of the manufacturer, the consumer and the cane grower ..... The floor price of cane fixed by government was intended to protect the framer from exploitation, but that was found not to be an incentive enough to induce him to increase his acreage. A device had to be found under which a price higher than the minimum could be paid by the manufacturer of sugar. The consumer, on the other hand, also to be protected against the spiralling or sugar price and his needs, growing as they had to be satisfied at some reasonable price."

Shelat, J. emphasises the need to modernise the factories which alone would yield a reasonable return. This is what he states : (SCC p. 142, para 28)

> "Both these and a larger production of sugar would not be possible unless there was a reasonable return which would ensure expansion, which again would not be possible unless new machinery for such expansion was brought in and factories, particularly in U.P. and Bihar, were modernised and renovated. A fair price for sugar, therefore, had to be such as would harmonise and satisfy at least to a reasonable extent these conflicting interests".

13. Significantly, the BICP's recommendation to group individual units having homogeneity in cost, irrespective of their location, was not accepted by the Central Government, particularly because the Tariff Commission itself had considered the question and reached the conclusions that geographical-cum-agro-economic considerations demanded the grouping of factoris with reference to States zones, or sub-zones as in the case of U.P. and Bihar. To group them on the basis of their location in various regions of the country for the purpose of price fixation is a rational method reflecting economic realities. This is particularly so as conditions generally vary from State as regards the availability and quality of sugarcane, labour conditions and others factories, whereas within the same region like facilities are generally available to all factories. If the cost structure varies from factory to factory, such variation is not necessarily caused by the non-availability, or the poor quality of raw material or the labour conditions, but probably for reasons unconnected with them, such as the age of the plant, availability of fiance, management ability, etc. There is great force in

the submission of the respondents that to group together factories having a high cost profile and to determine a price specially applicable to them is, as recognised by this Court in Panipat ((1973) 1 SCC 129 : (1973) 2 SCR 860) and Anakapalle ((1973) 3 SCC 435 : (1973) 2 SCR 882) to put a premium on incompetence, if not mismanagement.

14. The history of control over sugar has been set out at length in Panipat ((1973) 1 SCC 129 : (1973) 2 SCR 860) and we do not wish to burden this judgment with a narration of the circumstances which have led to the judgment with a a narration of the circumstance which have led to the introduction of partial control under which 60 per cent of the output of sugar is acquired and the balance left for the free sale. It is in implementation of this policy that sub-section (3-C) Section 3 was inserted (For an illuminating discussion of this aspect, see. A. M. Khusro Price Policy, Lancer International (1987), pp. 62-63 :

> "After many years of adverse experience a new strategy of dual pricing was introduced in sugar. The mills were asked to deliver to the public distribution system about 60 per cent of their output say at Rs. 2 per kg. and were allowed to sell the balance of 40 per cent in the free market at say Rs 6 per kg. The mills were delighted to do so as they got very much in the free market sales. With larger receipts they offered in the following season a higher price to the farmer (the sugarcane grower) who, in turn grew and offered more cane. In other words, the law of supply which had been held captive, as it were, was freed from bondage. With a higher price offer from the mills, the cane growers brought more land under sugarcane, diverted land from other crops to cane use more inputs, produced and delivered to the mills more cane and in fact diverted cane deliveries from the open-pan system to the mills system. Having thus obtained much more cane, the mills produced much more sugar and sold 30-40 per cent of it in the free market. Within a year or two, the free market price of sugar fell from Rs 6 to Rs 3 or even Rs 2.50. At this rate consumers began to buy more in the free market, millions of ration cards remained unused and the demands on the public distribution declined substantially. Prolonged shortages of sugar got converted into a relative abundance.") Before we examine the provisions of that sub-section under which the impugned notifications have been issued, we shall refer to the statutory scheme.

15. The Act was, as stated in the preamble, enacted by Parliament "to provide in the interest of the general public, for the control of the productions, supply and distribution of, and trade and commerce in, certain commodities. The entire Act is devoted to the cause of the general public with a view to achieving equitable of essential commodities at fair prices.

16. Section 3 of the Act confers wide power upon the Central Government to control production, supply distribution etc. essential commodities. It reads :

> "3. Powers to control production, supply distribution etc. of essential commodities - (1) If the Central Government is of opinion that 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 or for securing any essential commodity for the defence of India or the efficient conduct of military operations, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein."

17. Sub-section (2) of section 3 says that, without prejudice to the generality of the powers conferred by sub-section (1), an order made under that sub-section may provide for the matters specified in subs-section (2). One of them is what is contained in clause (f) of sub-section (2) which empowers the Central Government to require any person dealing in any commodity to sell the whole or a specified part of such commodity to the Central Government or the State Government or to a nominee of such government. It reads :

> "3. (2) Without prejudice to the generality of the powers conferred by sub-section (1) an order made there under may provide -
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> # * * *##
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> (f) for requiring any person holding in stock, or engaged in the production, or in the business of buying or selling of any essential commodity, -
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> (a) to sell the whole or a specified part of the quantity held in stock or produced or received by him, or
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> (b) in the case of any such commodity which is likely to be produced or received by him, to sell the whole or a specified part of such commodity when produced or received by him,
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> to the Central Government or a State Government or to an officer or agent of such government or to a corporation owned or controlled by such government or to such other person or class of persons and in such circumstances as may be specified in the order."

18. The power contained in sub-section (1) or sub-section (2) is exercisable by an order. An 'order is defined under Section 2 to include a direction issued thereunder. Any order made under Section 3 by the Central Government or by an officer or authority of the Central Government is required by sub-section (6) of Section 3 to be laid before both Houses of Parliament, as soon as may be after it is made. Any order made under Section 3 Which is of a general nature or affecting a class of persons has to be notified in the official gazette. [sub-section (5) of section 3]

19. Sub-section (3) of Section 3 provides that where any person has sold any essential commodity (sugar being such a commodity) in compliance with an order made with reference to clause (f) of sub-section (2), he shall be paid the price of the goods purchased from him as provided under clauses (a), (b) and (c) of sub-section (3). This sub-section operates only where an order has been made under sub-section (1) with reference to clause (f) of sub-section (2) While clause (a) of the sub-section postulates an agreed price, consistently with reference to the controlled price, if any when in agreement is reached. Where neither clause (a) nor clause (b) applies, either because there is no agreement or because there is no controlled price, the seller has to be paid, as per clause (c), a price calculated at the market rate prevailing in the locality at the date of the sale.

20. Sub-section (3-A) empowers the Central Government to regulate in accordance with the provisions of the sub-section the price of any foodstuff sold in a locality in compliance with an order made with reference to clause. (f) of sub-section (2). This power is exercisable by a direction which has to be duly notified in the official gazette. The power to issue the direction is notwithstanding anything contained in sub-section (3) Before issuing the notification, the Central Government has to form an opinion that the price if any foodstuff (including sugar) has to be

regulated for the purpose of controlling the rise in its prices or preventing its prices or preventing it holding in any locality. Any such notification will remain in force for any specified period not exceeding 3 months. The price payable in such cases is either the agreed price consistently with the controlled price, if any, or where no such agreement is possible, the price calculated with reference to the controlled price, if any, or where neither of these two methods is applicable, the price calculated with reference to the average market rate prevailing in the locality during the period of 3 months immediately prior to the date of the notification. The average market rate will be determined by an officer authorised by the Central Government and the rate so determined by him is not liable to be questioned in any court.

21. Sub-section (3-C) which is the crucial provision was inserted in 1967. It reads :

> "3 (3-C) Where any producer is required by an order made with reference to clause (f) of sub-section (2) to sell any kind of sugar (whether to the Central Government or a State Government or to an officer or agent of such government or to any other person or class of persons) and either no notification in respect of such sugar has been issued under sub-section (3-A) or any such notification, having been issued, has ceased to remain in force by efflux of time, then, notwithstanding anything contained in sub-section (3), there shall be paid to that producer an amount therefor which shall be calculated with reference to such price of sugar as the Central Government may, by order, determine, having regard to -
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> (a) the minimum price, if any, fixed for sugarcane by the Central Government under this section;
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> (b) the manufacturing cost of sugar;
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> (c) the duty or tax, if any, paid or payable thereon; and
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> (d) the securing of a reasonable return on the capital employed in the business of manufacturing sugar,
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> and different prices may be determined from time to time for different areas or for different factories or for different kinds of sugar.
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> Explanation. - For the purposes of this sub-section, "producer" means a person carrying on the business of manufacturing sugar."

22. Sub-section (3-C) is attracted whenever any producer is required to sell sugar by an order made with reference to sub-section (2)(f) and no notification has been issued under sub-section (3-A) or any such notification, having been issued, has ceased to be in force. Whenever sub-section (3-C) is attracted, it operates notwithstanding anything contained in sub-section (3). This means the compensation payable to the seller in the circumstances attracting sub-section (3-C) is not the price postulated in sub-section (3). Nor is it the price mentioned under sub-section (3-A), for that sub-section cannot be in operation when sub-section (3-C) is attracted. What is payable under sub-section (3-C) is an "amount" calculated with reference to the "price of sugar" determined in the manner indicated in that sub-section.

23. Construing sub-section (3-C), this Court in Panipat ((1973) 1 SCC 129 : (1973) 2 SCR 860) says : (SCC p. 139, para 22 : SCR p. 870)

> "Sub-section (3-C), with which we are presently concerned, was inserted in Section 3 by Section 3 of Act 36 of 1967. The sub-section lays down two conditions which must exist before it applies. The first is that there must be an order made with reference to sub-section (2), clause (f), and the second is that there is no notification under sub-section (3-A) or if any such notification has been issued it is no longer in force owing to efflux of time. Next, the words "notwithstanding anything contained in sub-section (3)" suggest that the amount payable to the person required to sell his stock of sugar would be with reference to the price fixed under the sub-section and not the agreed price or the market price in the absence of any controlled price under sub-section (3-A). The sub-section then lays down two things; firstly, that where a producer is required by an order with reference to sub-section (2)(f) to sell any kind of sugar, there shall be paid to that producer an amount therefor, that is for such stock of sugar as is required to be sold, and secondly, that such amount shall be calculated with reference to such price of sugar as the Central Government may, by order, determine, having regard to the four factors set out in clauses (a), (b), (c) and (d). Unlike the preceding three sub-sections under which the amount payable is either the agreed price, or the controlled price, or where neither of these prices is applicable at the market or average market price, the amount in respect of sugar required to be sold is to be calculated at the price determined by the Central Government."

24. What is specially significant is that sub-section (3-C) postulates payment of an amount to the producer who has been required to sell sugar in the circumstances mentioned therein. What is required to be paid to him is not the price of sugar, but only an amount. That amount has to be calculated with reference to the price of sugar. The "price" is determined by the Central Government by means of an order which, as required by sub-sections (5) and (6), has to be notified in the official gazette and laid before both Houses of Parliament. The order notifying the "price of sugar" is of general application and it is the rate at which the actual "amount" payable to each seller is calculated.

25. The price of sugar must be determined by the Central Government having regard to the factors mentioned in clauses (a) to (d) of sub-section (3-C). This is done with reference to the industry as a whole and not with reference to any individual seller. In contradistinction to the "price of sugar", the "amount" is calculated with reference to the particular seller. The Central Government is authorised to determine different prices for different areas or for different factories or for different kinds of sugar. Whether factories are required to be grouped together for a rational determination of the prices according to their location or their size, age and capacity or by any other standard is a matter for decision size, age and capacity or by any other standard is a matter for decision by the Central Government on the basis of relevant material. What is contemplated by the legislature in delegating such wide discretion to the Central Government is that it must apply its mind to the manifold questions relevant to the determination of prices and with due regard to the norms laid down in the sub-section. What is required by sub-section (3-C) is the adoption of a valid classification of factories having a rational nexus to the object sought to be achieved, viz., determination of a fair price of sugar with reference to which the actual amounts payable to the producers, in the circumstances attracting the sub-section, are calculated.

26. Referring to the legislative background of sub-section (3-C), this Court in Panipat ((1973) 1 SCC 129 : (1973) 2 SCR 860) observes : (SCC p. 140, para 24)

> "In order to appreciate the meaning of clauses (a), (b), (c) and (d), it must be

> remembered that ever since control on sugar was imposed, government had set up expert committees to work out cost-schedules and fair prices Starting in the beginning with an all-India cost-schedule worked out on the basis of the total production of sugar, the factories were later grouped together into zones or regions and different cost-schedules for different Zones or regions were constructed on the basis of which fair prices were worked out at which sugar was distributed and sold. The Tariff Commission in 1958 and the Sugar Enquiry Commission in 1965 had worked out the zonal cost-schedules on the basis of averaged recovery and duration, the minimum and not the actual price of cane, the averaged conversion costs and recommended a reasonable return on the capital employed by the industry in the business of manufacturing sugar. This experience was before the legislature at the time when sub-section (3-C) was inserted in the Act. The legislature therefore incorporated the same formula in the new sub-section as the basis for working out the price. The purpose behind enacting the new sub-section was threefold, to provide an incentive to increase production of sugar, encourage expansion of the industry, to devise a means by which the cane producer could get a share in the profits of the industry through prices for his cane higher than the minimum price fixed and secure to the consumer distribution of at least a reasonable quantity of sugar at a fair price."

Clauses (a) to (d) of sub-section (3-C) postulate that the price of sugar must be determined having regard to the minimum price, if any, fixed for sugarcane by the Central Government, the manufacturing cost of sugar, the duty or tax applicable in the zone, and the securing of a reasonable return on the capital employed in the business of manufacturing sugar. Referring to clause (d) of sub-section (3-C) this Court observes in Panipat ((1973) 1 SCC 129 : (1973) 2 SCR 860), observes : (SCC p. 140, para 24)

> "In order to appreciate the meaning of clauses (a), (b), (c) and (d), it must be remembered that ever since control on sugar was imposed, government had set up expert committees to work out cost-schedule worked out on the basis of the total production of sugar, the factories were later grouped together into zones or regions and different cost-schedules for different zones or regions were constructed on the basis of which fair prices were worked out at which sugar was distributed and sold. The Tariff Commission in 1958 and the Sugar Enquiry Commission in 1965 had worked out the zonal cost-schedules on the basis of averaged recovery and duration, the minimum and not the actual price of cane, the averaged conversion costs and recommended a reasonable return on the capital employed by the industry in the business of manufacturing sugar. This experience was before the legislature at the time when sub-section (3-C) was inserted in the Act. The legislature therefore incorporated the same formula in the new sub-section as the basis for working out the price. The purpose behind enacting the new sub-section was threefold, to provide an incentive to increase production of sugar, encourage expansion of the industry, to devise a means by which the cane producer could get a share in the profits of the industry through prices for his cane higher than the minimum price fixed and secure to the consumer distribution of at least a reasonable quantity of sugar at a fair price."

Clauses (a) to (d) of sub-section (3-C) postulate that the price of sugar must be determined having regard to the minimum price, if any, fixed for sugarcane by the Central Government, the manufacturing cost of sugar, the duty or tax applicable in the zone, and the securing of a reasonable return on the capital employed in the business of manufacturing sugar. Referring to clause (d) of

sub-section (3-C), this Court observes in Panipat ((1973) 1 SCC 129 : (1973) 2 SCR 860 : (SCC p. 141, para 25)

> "It is clear from the reports of the Tariff Commission that a reasonable return recommended by that body at a fixed amount of Rs 10.50 per quintal which worked out in 1966-67 at 12.5 per cent per annum was not in respect of levy sugar only but on the whole, so that even if such a return was not obtainable on levy sugar but was obtainable on the whole, it would meet the requirement of clause (d). In this conclusion we derive a twofold support, firstly from the language used in clause (d) itself, viz., a reasonable return on the capital employed in the business of manufacturing levy sugar only, and secondly, from the fact of the Commission having all along used the same phraseology while recommending Rs. 10.50 per quintal as an addition by way of a reasonable return on the capital employed in the industry. The cost-schedules prepared by these bodies were for determining a fair price in relation to the entire sugar produced by the industry and the return which should be granted to it on the capital employed in the industry and not with respect to that stock only required to be sold under sub-section (2)(f). This is clear from the heading of Chapter 9 of the Tariff Commission's Report, 1969, "Cost Structure and Price Fixation"."

27. The petitioners contend that although the government has the discretion to fix different areas or for different factories, or for different kinds of sugar, such wide discretion has to be reasonably exercised. It is, of course, a well accepted principle that any discretion conferred on the executive has to be reasonably exercised. Nevertheless, it is discretion which the court will not curtail unless the exercise of it is impeachable on well accepted grounds such as 'ultra vires' or 'unreasonableness'.

28. The petitioners further contend that the Act requires the government to have regard to clauses (a) to (d) and, therefore, it is mandatory on the part of the government to act strictly in compliance with the provisions of those clauses in determining the prices. According to them, "having regard to" is a mandatory requirement demanding strict compliance with the provisions to which reference is made by the legislature. They say that the ingredients of clauses (a) to (d) must be examined with reference to each producer as a condition precedent to the determination of the price of sugar.

29. We may in this connection point out that the petitioners have not furnished any data to show that the prices determined by the government would have been different had the ingredients of clauses (a) to (d) of the sub-section been examined with reference to each individual producer instead of a representative cross-section of manufacturing units. Be that as it may, the expression "having regard to" must be understood in the context in which it is used in the statute. See Union of India v. Kamlabhai Harjiwandas Parekh ((1968) 1 SCR 463, 471 : AIR 1968 SC 377). These words do not mean that the government cannot, after taking into account the matters mentioned in clauses (a) to (d), consider any other matter which may be relevant. The expression is not "having regard only to" but "having regard to". These words are not a fetter; they are not words of limitation, but of general guidance to make an estimate. The government must, of course, address itself to the questions to which it must have regard, and, having done so, it is for the government to determine what it is empowered to determine with reference to what it reasonably considers to be relevant for the purpose. The Judicial Committee in CIT v. Williamson Diamonds Ltd. (LR 1958 AC 41, 49 : (1957) 3 WLR 663) observed with reference to the expression "having regard to" : (AC p. 49)

> "The form of words used no doubt lends itself to the suggestion that regard should be

> paid only to the two matters mentioned, but it appears to their Lordships that it is impossible to arrive at a conclusion as to reasonableness by considering the two matters mentioned isolated from other relevant factors. Moreover, the statute does not say "having regard only" to losses previously incurred by the company and to the smallness of the profits made. No answer, which can be said to be in any measure adequate, can be given to the question of "unreasonableness" by considering these two matters alone."

See CIT v. Gungadhar Banerjee and Co. (P) Ltd. ((1965) 3 SCR 439, 444-45 : AIR 1965 SC 1977 : 57 ITR 176) See also Saraswati Industrial Syndicate Ltd. v. Union of India ((1974) 2 SCC 630, 633 : (1975) 1 SCR 956, 959). In State of Karnataka v. Ranganatha Reddy ((1977) 4 SCC 471, 488 : (1978) 1 SCR 641, 657-58) this Court stated : (SCC p. 488, para 23 : SCR pp. 657-58)

> "The content and purport of the expressions "having regard to" and "shall have regard to" have been the subject matter of consideration in various decisions of he courts in England as also in this country. We may refer only to a few. In Illingworth v. Walmsley ((1900) 2 QB 142 : 16 TLR 281) it was held by the Court of Appeal, to quote a few words from the judgment of Romer C.J. at page 144 :
>
> "All that clause 2 means is that the tribunal assessing the compensation is to bear in mind and have regard to the average weekly wages earned before and after the accident respectively. Bearing that in mind, a limit is placed on the amount of compensation that may be awarded ...."

In another decision of the Court of Appeal in Perry v. Wright ((1908) 1 KB 441 : 77 LJ KB 236) Cozens-Hardy, M.R. observed at page 451 :

> "No mandatory words are there used; the phrase is simply "regard may be had". The sentence is not grammatical, but I think the meaning is this : Where you cannot compute you must estimate, as best as you can, the rate per week at which the workman was being remunerated, and to assist you in making an estimate you may have regard to analogous cases."

It is worthwhile to quote a few words from the judgment of Fletcher Moulton, L.J. at page 458. Under the phrase 'Regard may be had to' the facts which the courts may thus take cognizance of are to be 'a guide, and not a fetter'. This Court speaking through one of us (Beg, J., as he then was), has expressed the same opinion in the case of Saraswati Industrial Syndicate Ltd. v. Union of India ((1965) 3 SCR 439, 444-45 : AIR 1965 SC 1977 : 57 ITR 176). Says the learned Judge at page 959 : (SCC p. 633, para 3) 'The expression "having regard to" only obliges the government to consider as relevant data material to which it must have regard'."

In State of U. P. v. Renusagar Power Co. ((1988) 4 SCC 59 : AIR 1988 SC 1737), one of us (Mukharji, J., as he then was) observed :

> "The expression "having regard to" only obliges the government to consider as relevant data material to which it must have regard ...".

In O'May v. City of London Real property Co. Ltd. ((1982) 1 All ER 660, 665 : (1982) 2 WLR 407 (HL), Lord Hailsham stated :

> "A certain amount of discussion took place in argument as to the meaning of 'having regard to' in Section 35. Despite the fact that the phrase has only just been used by the draftsman of Section 34 in an almost mandatory sense, I do not in any way suggest that the court is intended or should in any way attempt to bind the parties to the terms of the current tenancy in any permanent form .....".

30. The words "having regard to" in the sub-section are the legislative instruction for the general guidance of the government in determining the price of sugar. They are not strictly mandatory, but in essence directory. The reasonableness of the order made by the government in exercise of its power under sub-section (3-C) will, of course, be tested by asking the question whether or not the matters mentioned in clauses (a) to (d) have been generally considered by the government in making its estimate of the price, but the court will not strictly scrutinise the extent to which those matters or any other matters have been taken into account. There is sufficient compliance with the sub-section, if the government has addressed its mind to the factors mentioned in clauses (a) to (d), amongst other factors which the government may reasonably consider to be relevant, and has come to a conclusion, which any reasonable person, placed in the position of the government, would have come to. On such determination of the price of sugar, which, as stated in Panipat ((1973) 1 SCC 129 : (1973) 2 SCR 860) is the fair price, the sub-section postulates the calculation of an amount, with reference to such price, for payment to each producer who has complied with an order made with reference to sub-section (2)(f). The "price of sugar", unlike the "amount", is arrived at by a process of costing in respect of a representative cross-section of manufacturing units, bearing, of course, in mind the legislative instruction contained in clauses (a) to (d).

31. The Attorney General submits that orders determining the prices of sugar in terms of the sub-section are of general application and, therefore, legislative in character. Omission, if any, to consider the peculiar problems of individual producers is not a ground for judicial review. The petitioners; counsel as well as Mr. Venugopal appearing for the intervener (ISMA), do not agree. They submit that the sub-section contemplates only administrative or quasi-judicial order of particular application and impugned orders are not legislative. They rely upon a certain observation of this Court in Union of India v. Cynamide India Ltd. ((1987) 2 SCC 720 : ((1987) 2 SCR 841) Mr. Venugopal, however, hastens to add that his client does not seek personal hearing before prices are determined. Mr. B. R. L. Iyengar, supporting the contentions of the petitioners, points out that the expression 'determine' used in sub-section (3-C) indicates that the order to which the expression refers is quasi-judicial.

32. Judicial decisions are made according to law while administrative decisions emanate from administrative policy. Quasi-judicial decision are also administrative decisions, but they are subject to some measure of judicial procedure, such as rules of natural justice. To distinguish clearly legislative and administrative functions is "difficult in theory and impossible in practice". (Comd. 4060 (1932), p. 73; see H. W. R. Wade, Administrative Law, 6th edn., p. 47) Referring to these two functions, Wade says :

> "They are easy enough to distinguish at the extremities of the spectrum : an Act of Parliament is legislative and a deportation order is administrative. But in between is a wide area where either label could be used according to taste, for example where ministers make orders or regulations affecting large numbers of people ....." (Ibid., p. 848)

Wade points out that legislative power is the power to prescribe the law for people in general, while

administrative power is the power to prescribe the law for them, or apply the law to them, in particular situations. A scheme for centralising the electricity supply undertakings may be called administrative, but it might be just as well legislative. Same is the case with ministerial orders establishing new towns or airports etc. He asks : "And what of 'directions of a general character' given by a minister to a nationalised industry ? Are these various orders legislative or administrative ?" Wade says that the correct answer would be that they are both. He says : ".... there is an infinite series of gradations, with a large area of overlap, between what is plainly legislation and what is plainly administration" (Ibid). Courts, nevertheless, for practical reasons, have distinguished legislative orders from the rest of the orders by reference to the principle that the former is of general application. They are made formally by publication and for general guidance with reference to which individual decisions are taken in particular situations.

33. According to Griffith and Street, an instruction may be treated as legislative even when they are not issued formally, but by a circular or a letter to the like. What matters is the substance and not the form, or the name. The learned authors say : "... where a Minister (or other authority) is given power in a statute or an instrument to exercise executive, as opposed to legislative, powers-as, for example, to requisition property or to issue a licence - and delegates those powers generally, then any instructions which he gives to his delegates may be legislative" (Principles of Administrative Law, 5th edn., p. 65). Where an authority to whom power is delegated is entitled to sub-delegate his power, be it legislative, executive or judicial, then such authority may also give instructions to his delegates and these instructions may be also give instructions to his delegates and these instructions may be regarded as legislative. However, as pointed out by Denning, L.J., (as he then was) a judicial tribunal cannot delegate its functions except when it is authorised to be so expressly or by necessary implication : see Barnard v. National Dock Labour Board ((1953) 2 QB 18, 40).

34. Kenneth Culp Davis says : "What distinguishes legislation from adjudication is that the former affects the rights of individuals in the abstract and must be applied in a further proceeding before the legal position of any particular individual will be definitely touched by it; while adjudication operates concretely upon individuals in their individual capacity" (Administrative Law Text, 3rd edn., pp. 123-24. Justice Holmes' definition, which is what is called the "time test" and which Davis describes as one which has produced many unsatisfactory practical results, reads : (Prentis v. Atlantic Coast Line Co., 211 US 210, 226 : 53 L ed 150, 158-59)

> "A judicial inquiry investigates, declares, and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end. Legislation, on the other hand, looks to the future and changes existing conditions by making a new rule, to be applied thereafter to all or some part of those subject to its power. The establishment of a rate is the making of a rule for the future, and therefore is an act legislative, not judicial ..."

35. The element of general application is often cited as a distinct feature of legislative activity. In the words of Chief Justice Burger, "rule making is normally directed toward the formulation of requirements having a general application to all members of a broadly indentifiable class". (Quoted by Bernard Schwartz in Administrative Law, p. 144 (1976) Bernard Schwartz says : "An adjudication, on the other hand, applies to specific individuals or situations. Rule making affects the rights of individuals in the abstract and must be applied in a further proceeding before the legal position of any particular individual will be definitely affected; adjudication operates concretely upon individuals in their individual capacity" (Ibid). According to Schwartz, the "time test" and the "applicability test" are workable in most cases, although in certain situations distinctions are indeed

difficult to draw.

36. A statutory instrument (such as a rule, order or regulation) emanates from the exercise of delegated legislative power which is the part of the administrative process resembling enactment of law by the legislature. A quasi-judicial order emanates from adjudication which is the part of the administrative process resembling a judicial decision by a court of law. This analogy is imperfect and perhaps unhelpful in classifying borderline or mixed cases which are better left unclassified. (See Davis, Administrative Law Text, p. 123)

37. If a particular function is termed legislative rather than judicial, practical results may follow as far as the parties are concerned. When the function is treated as legislative, a party affected by the order has no right to notice and hearing, unless, of course, the statute so requires. It being of general application engulfing a wide sweep of powers, applicable to all persons and situations of a broadly identifiable class, the legislative order may not be vulnerable to challenge merely by reason of its omission to take into account individual peculiarities and differences amongst those falling within the class.

38. In Union of India v. Cynamide India Ltd. ((1987) 2 SCC 720 : (1987) 2 SCR 841), Chinnappa Reddy, J. referring to the earlier decisions of this Court states : (SCC pp. 734-35, paras 5 and 7)

> "... legislative action, plenary or subordinate, is not subject to rules of natural justice. In the case of Parliamentary legislation, the proposition is self-evident. In the case of subordinate legislation, it may happen that Parliament may itself provide for a notice and for a hearing ... But, where the legislature has not chosen to provide for any notice or hearing, no one can insist upon it and it will not be permissible to read natural justice into such legislative activity ..
>
> "... It is true that, with the proliferation of delegated legislation, there is a tendency for the line between legislation and administration to vanish into an illusion. Administrative quasi-judicial decisions tend to merge in legislative activity and, conversely, legislative activity tends to fade into and present an appearance of an administrative or quasi-judicial activity".

Stating that rule making is of general application to all members of a broadly identifiable class while adjudication is applicable to specific individuals or situations, the learned Judge observes : (SCC p. 736, para 7)

> "A price fixation measure does not concern itself with the interests of an individual manufacturer or producer. It is generally in relation to a particular commodity or class of commodities or transactions. It is a direction of a general character, not directed against a particular situation. It is intended to operate in the future. It is conceived in the interests of the general consumer public. The right of the citizen to obtain essential articles at fair prices and the duty of the State to so provide them are transformed into the power of the State to fix prices and the obligations of the producer to charge no more than the price fixed. Viewed from whatever angle, the angle of general application, the prospectiveness of its effect, the public interest served, and the rights and obligations flowing therefrom, there can be no question that price fixation is ordinarily a legislative activity."

The learned Judge emphasises : (SCC p. 736, para 7)

> "Price fixation may occasionally assume an administrative or quasi-judicial character when it relates to acquisition or requisition of goods or property from individuals and it becomes necessary to fix the price separately in relation to such individuals. Such situations may arise when the owner of property or goods is compelled to sell his property or goods to the government or its nominee and the price to be paid is directed by the legislature to be determined according to the statutory guidelines laid down by it. In such situations the determination of price may acquire a quasi-judicial character".

39. These observations have been cited with approval by one of us (Sabayasachi Mukharji, J. as he then was) in Renusagar ((1908) 1 KB 441 : 77 LJ KB 236).

40. In Saraswati Industrial Syndicate Ltd. v. Union of India ((1965) 3 SCR 439, 444-45 : AIR 1965 SC 1977 : 57 ITR 176) this Court states : (SCC p. 636, para 13 : SCR p. 961)

> "Price fixation is more in the nature of a legislative measure even though it may be based upon objective criteria found in a report or other material. It could not, therefore, give rise to a complaint that a rule of natural justice has not been followed in fixing the price".

In Prag Ice & Oil Mills v. Union of India ((1978) 3 SCC 459, 482 : (1978) 3 SCR 293, 317), Chandrachud, J., as he then was, speaks for the majority : (SCC p. 482, para 37)

> "We think that unless, by the terms of a particular statute, or order, price fixation is made a quasi-judicial function for specified purposes or cases, it is really legislative in character in the type of control order which is now before us because it satisfies the tests of legislation. A legislative measure does not concern itself with the facts of an individual case. It is meant to lay down a general rule applicable to all persons or objects or transactions of a particular kind or class".

See also the observation of Megarry, J. as he then was, in Bates v. Lord Hailsham of St. Marylebone ((1972) 3 All ER 1019, 1024 : (1972) 1 WLR 1373).

41. The impugned orders, duly published in the official gazettes notifying the prices determined for sugar of various grades and produced in various zones, and applicable to all producers of such sugar, can, in our view, be legitimately characterised as legislative. These orders are required by sub-section (6) to be laid before both Houses of Parliament. The notified prices are applicable without exception to all persons falling within well defined groups. The prices are determined in accordance with the norms postulated in the sub-section. It is with reference to such predetermined prices of sugar that the "amount" payable to each producer, who has sold sugar in compliance with an order made with reference to clause (f) of sub-section (2), is calculated. The calculation of such amount is, in contradistinction to the determination of "price of sugar", a non-legislative act.

42. Thus, while individual consideration is relevant to the calculation of the "amount", it is not so for the determination of the "price of the sugar" which is the rate at which the amount is calculated. That price, as stated in panipat ((1973) 1 SCC 129 : (1973) 2 SCR 860) is to be arrived at by a process of costing with reference to a reasonably efficient and economic representative cross-section of manufacturing units.

43. In this connection, we must point out that at first blush a certain observation of Chinnappa Reddy, J. in Cynamide ((1982) 1 All ER 660, 665 : (1982) 2 WLR 407 (HL), on which much reliance is placed by the petitioners' counsel, appears to be inconsistent with what we have now stated. The learned Judge says : (SCC p, 741, para 13)

> "The Order made under Section 3(2)(c), which is not in respect of a single transaction, nor directed to a particular individual is clearly a legislative act, while an Order made under Section 3(3-C) which is in respect of a particular transaction of compulsory sale from a specific individual is a non-legislative act."

It would appear that what the learned Judge had in mind was an order by which the "amount" was calculated in terms of sub-section (3-C) in respect of each individual producer and not an order determining the "price of sugar". While the former is non-legislative, the latter, by the very test adopted by the learned Judge, is legislative in character. We, therefore, understand the observation of the learned Judge on this point as applicable only to the individual order fixing the "amount" in terms of the sub-section and not to orders determining the "price of sugar" which are what the impugned orders are. Any other construction of the sub-section would conflict with what was adopted by the Constitution Bench in Panipat ((1973) 1 SCC 129 : (1973) 2 SCR 860) and would, therefore, be unsustainable.

44. The individual orders, calculating the "amounts" payable to the individual producers, being administrative orders founded on the mechanics of price fixation, they must be left to the better instructed judgment of the executive, and in regard to them the principle of audi alteram partem is not applicable. All that is required is reasonableness and fair play which are in essence emanations from the doctrine of natural justice as explained by this Court in A. K. Kraipak v. Union of India ((1969) 2 SCC 262 : (1970) 1 SCR 457). See also the observation of Mukharji, J., as he then was, in Renusagar ((1908) 1 KB 441 : 77 LJ KB 236) (at SCC p. 105).

45. Price fixation is in the nature of a legislative action even when it is based on objective criteria founded on relevant material. No rule of natural justice is applicable to any such order. It is nevertheless imperative that the action of the authority should be inspired by reasons : Saraswati Industrial Syndicate Ltd. ((1974) 2 SCC 630, 633 : (1975) 1 SCR 956, 959) [at SCR pp. 961, 962 : SCC p. 636, para 13]. The government cannot fix any arbitrary price. It cannot fix prices on extraneous considerations : Renusagar ((1908) 1 KB 441 : 77 LJ KB 236)

46. Any arbitrary action, whether in the nature of a legislative or administrative or quasi-judicial exercise of power, is liable to attract the prohibition of Article 14 of the Constitution. As stated in E. P. Royappa v. State of Tamil Nadu ((1974) 4 SCC 3 : 1974 SCC (L&S) 165 : (1974) 2 SCR 348) equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch : Unguided and unrestricted power is affected by the vice of discrimination : Maneka Gandhi v. Union of India ((1978) 1 SCC 248, 293-94 : AIR 1978 SC 597). The principle of equality enshrined in Article 14 must guide every State action, whether it be legislative, executive, or quasi-judicial : Ramana Dayaram Shetty v. International Airport Authority of India ((1979) 3 SCC 489, 511-12 : (1979) 3 SCR 1014, 1042). Ajay Hasia v. Khalid Mujib Sehravadi ((1981) 1 SCC 722 : 1981 SCC (L&S) 258) and D. S. Nakara v. Union of India ((1983) 1 SCC 305 : 1983 SCC (L&S) 145).

47. Power delegated by state is limited by its terms and subordinate to its objects. The delegate must act in good faith, reasonably, intra vires the power granted, and on relevant consideration of material

facts. All his decisions, whether characterised as legislative or administrative or quasi-judicial, must be in harmony with the Constitution and other laws of the land. They must be "reasonably related to the purposes of the enabling legislation". See Leila Mourning v. Family Publications Service (411 US 356 : 36 L ed 2d 318). If they are manifestly unjust or oppressive or outrangeous or directed to an unauthorised end or do not tend in some degree to the accomplishment of the objects of delegation, court might well say, "Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires : per Lord Russel of Killowen, C.J. in Kruse v. Johnson ((1898) 2 QB 91, 99 : 78 LT 647).

48. The doctrine of judicial review implies that the repository of power acts within the bounds of the power delegated and he does not abuse his power. He must act reasonably and in good faith. It is not only sufficient that an instrument is intra vires the parent Act, but it must also be consistent with the constitutional principles : Maneka Gandhi v. Union of India ((1978) 1 SCC 248, 293-94 : AIR 1978 SC 597) (SCC pp. 314-15).

49. Where a question of law is at issue, the court may determine the rightness of the impugned decision on its own independent judgment. If the decision of the authority does not agree with that which the court considers to be the right one, the finding of law by the authority is liable to be upset. Where it is a finding of fact, the court examines only the reasonableness of the finding. When that finding is found to be rational and reasonableness of the finding. When that finding is found to be rational and reasonably based on evidence, in the sense that all relevant material has been taken into account and no irrelevant material has influenced the decision, and the decision is one which any reasonably minded person, acting on such evidence, would have come to, then judicial review is exhausted even though the finding may not necessarily be what the court would have come to as a trier of fact. Whether an order is characterised as legislative or administrative or quasi-judicial, or, whether it is a determination of law or fact, the judgment of the expert body, entrusted with power, is generally treated as final and the judicial function is exhausted when it is found to have "warrant in the record" and a rational basis in law : See Rochester Tel. Corp. v. United States (307 US 125 (1939) : 83 L ed 1147). See also Associated Provincial picture Houses Ltd. v. Wednesbury Corporation ((1948) 1 KB 223 : (1947) 1 All ER 498).

50. As stated by Lord Hailsham of St. Marylebone L.C. (HL) in Chief constable of the North Wales Police v. Evans ((1982) 1 WLR 1155, 1160-61 : (1982) 2 All ER 141) :

> "The function of the court is to see that lawful authority is not abused by unfair treatment and not to attempt itself the task entrusted to that authority by the law ..... The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised by law to decide for itself a conclusion which is correct in the eyes of the court".

In the same case Lord Brightman says :

> "Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made."

51. A repository of power acts ultra vires either when he acts in excess of his power in the narrow sense or when he abuses his power by acting in bad faith or for an inadmissible purpose or on irrelevant grounds or without regard to relevant considerations or with gross unreasonableness. See

Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation ((1948) 1 KB 223 : (1947) 1 All ER 498). In the words of Lord Macnaghten in Mayor & C. Westminster Corporation v. London and North Western Railway (1905 AC 426, 430 : 93 LT 143).

> "... It is well settled that a public body invested with statutory powers such as those conferred upon the corporation must take care not to exceed or abuse its powers. It must keep within the limits of the authority committed to it. It must act in good faith. And it must act reasonably. The last proposition in involved in the second, if not in the first."

In Barium Chemicals Ltd. v. Company Law Board (1966 Supp SCR 311 : AIR 1967 SC 295 : (1966) 36 Comp Cas 639), this Court states : (SCR pp. 359-60, per Shelat, J.)

> "... Even if (the statutory order) is passed in good faith and with the best of intention to further the purpose of the legislation which confers the power, since the authority has to act in accordance with and within the limits of that legislation, its order can also be challenged if it is beyond those limits or is passed on grounds extraneous to the legislation or if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite under the legislation. In any one of these situations it can well be said that the authority did not honestly from its opinion or that in forming it, it did not apply its mind to the relevant facts."

In Renusagar ((1908) 1 KB 441 : 77 LJ KB 236), Mukharji, J., as he then was, states : (SCC p. 104, para 86)

> "The exercise of power whether legislative or administrative will be set aide if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary. Similarly, if the power has been exercised on a non-consideration or non-application of mind to relevant factors the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated".

52. The true position, therefore, is that any act of the repository of power, whether legislative or administrative or quasi-judicial, is open to challenge if it is in conflict with the Constitution or the governing Act or the general principles of the law of the land or it is so arbitrary or unreasonable that no fair minded authority could ever have made it (See the observation of Lord Russel in Kruse v. Johnson, (1898) 2 QB 91 and that of Lord Greene, M.R. in Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation, (1948) 1 KB 223. See also UDC v. Mixnam Properties Ltd., (1965) AC 735; Commissioners of Customs and Excise v. Cure and Deeley Ltd., (1962) 1 QB 340; McEldowney v. Forde, (1971) AC 632 (HL); Carltona Ltd. v. Commissioners of Works, (1943) 2 All ER 560, 564; Point of Ayr. Collieries Ltd. v. Lloyd George, (1943) 2 All ER 546; Scott v. Glasgow Corporation, (1899) AC 470, 492; Robert Baird Ltd. v. Corporation of City of Glasgow, (1936) AC 32, 42; 297 US 129, 134; Yates (Arthur) & Co. Pty. WALR 18; Boyd Builders Ltd. v. City of Ottawa, (1964) 45 DLR (2d) 211; Re Burns Co., 265 US 315, 320-22).

53. The impugned orders are undoubtedly based on an exhaustive study by experts. They are fully supported by the recommendations of the Tariff Commission in 1969 and 1973. It is true that these

recommendations in some respects were the subject matter of criticism by a subsequently appointed expert body, viz., the BICP. Apart from the fact that the BICP's criticism has not been accepted by the government, that criticism is not relevant insofar as the impugned orders are concerned because the latter are in regard to an earlier period. These orders are fully supported by the relevant material on record. The conclusions reached by the Central Government in exercise of its statutory power are expert conclusions which are not shown to be either discriminatory or unreasonable or arbitrary or ultra vires. The material brought to our notice by the petitioners does not support the arguments at the bar that the Central Government has not applied its mind to the relevant questions to which they are expected to have regard in terms of the statute. That the sugar factories for the purpose of determining the price of sugar in terms of sub-section (3-C) should be grouped on the basis of their geographical location is a policy decision based on exhaustive expert conclusions.

54. Factories are classified with due regard to geographical-cum-agro-economic considerations. Fair prices for different grades of sugar are determined for each zone with reference to a reasonably efficient and economic representative cross-section of the manufacturing units. Such classification, as held in Panipat ((1973) 1 SCC 129 : (1973) 2 SCR 860) and Anakapalle ((1973) 3 SCC 435 : (1973) 2 SCR 882) cannot, in the absence of evidence to the contrary, be characterised as arbitrary or unreasonable or not founded on an intelligible differentia having a rational nexus with the object sought to be achieved by sub-section (3-C). The person assailing such classification "carries the heavy burden of making a convincing showing that it is invalid because it is unjust and unreasonable in its consequences" (Federal Power Commission v. Hope Gas Co., 320 US 591, 602 (1944). If the petitioners nevertheless incur losses, such losses need not necessarily have arisen by reason of geographical zoning, but for reasons totally unconnected with it, such as the condition of the plant and machinery, quality of management, investment policy, labour relations, etc. These are matters on which the petitioners have not furnished data, and, in any event judicial review is hardly appropriate for their consideration.

55. In this connection we could would recall the observation of Chinnappa Reddy, J. in Union of India v. Cynamide India Ltd. ((1987) 2 SCC 720 : (1987) 2 SCR 841) : (SCC p. 736, para 7)

> "We do not agree with the basic premise that price fixation primarily affects manufacturers and producers. Those who are most vitally affected are the consumer public. It is for their protection that price fixation is resorted to and any increase in price affects them as seriously as any decrease does a manufacturer, if not more."

In Gupta Sugar Works v. State of U. P. (1987 Supp SCC 476, 481) one of us (Jagannatha Shetty, J.) stated : (SCC p. 481, para 8)

> "In this view of the matter, the primary consideration in the fixation of price would be the interest of consumers rather than that of the producers."

56. The Court has neither means nor the knowledge to re-evaluate the factual basis of the impugned orders. The court, in exercise of judicial review, is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence. In the words of Justice Frankfurter of U.S. Supreme Court in Railroad Commission of Texas v. Rowan & Nichols Oil Company (311 US 570, 575 : 85 L ed 358, 362) :

> "Nothing in the Constitution warrants a rejection of these expert conclusions. Nor, on the basis on intrinsic skills and equipment, are the federal courts qualified to set their

> independent judgment on such matters against that of the chosen State authorities ... When we consider the limiting conditions of litigation - the adaptability of the judicial process only to issues definitely circumscribed and susceptible of being judged by the techniques and criteria within the special competence of lawyers - it is clear that the Due Process Clause does not require the feel of the expert to the supplanted by an independent view of judges on the conflicting testimony and prophecies and impressions of expert witnesses".

This observation is of even greater significance in the absence of a Due Process Clause.

57. Judicial review is not concerned with matters of economic policy. The court does not substitute its judgment for that of the legislature or its agents as to matters within the province of either. The court does not supplant the "feel of the expert" by its own views. When the legislature acts within the sphere of its authority and delegates power to an agent, it may empower the agent to make findings of fact which are conclusive provided such findings satisfy the test of reasonableness. In all such cases, judicial inquiry is confined to the question whether the findings of fact are reasonably based on evidence and whether such findings are consistent with the laws of the land. As stated by Jagannatha Shetty, J. in Gupta Sugar Works (1987 Supp SCC 476, 481) : (SCC p. 479, para 4)

> "... the court does not act like a chartered accountant nor acts like an income tax officer. The court is not concerned with any individual case or any particular problem. The court only examines whether the price determined was with due regard to considerations provided by the statute. And whether extraneous matters have been excluded from determination."

58. Price fixation is not within the province of the courts. Judicial functions in respect of such matters is exhausted when there is found to be a rational basis for the conclusions reached by the concerned authority. As stated by Justice Cardozo in Mississippi Valley Barge Line Company v. United States of America (292 US 282, 286-87 L ed 1260, 1265) :

> "The structure of a rate schedule calls in peculiar measure for the use of that enlightened judgment which the Commission by training and experience is qualified to form .... It is not the province of a court to absorb this function to itself ..... The judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body."

59. It is a matter of policy and planning for the Central Government to decide whether it would be, on adoption of a system of partial control, in the best economic interest of the sugar industry and the general public that the sugar factories are grouped together with reference to geographical-cum-economic factors for the purpose of determining the price of levy sugar. Sufficient power has been delegated to the Central Government to formulate and implement its policy decision by means of statutory instruments and executive orders. Whether the policy should be altered to divide the sugar industry into groups of units with similar cost characteristics with particular reference to recovery, duration, size and age of the units and capital cost per tonne of output, without regard to their location, as recommended by the BICP, is again a matter for the Central Government to decide. What is best for the sugar industry and in what manner the policy should be formulated and implemented, bearing in mind the fundamental object of the statute, viz., supply and equitable distribution of essential commodity at fair prices in the best interest of the general public, is a matter for decision exclusively within the province of the Central Government. Such matters do not

ordinarily attract the power of judicial review.

60. We would, in this connection, recall the words of Justice Frank-furter in Secretary of Agriculture v. Central Roig Refining Company (338 US 604, 617-18 : 94 L ed 381, 392) :

> "Congress was .... confronted with the formulation of policy peculiarly with its wide swath of discretion. It would be a singular intrusion of the judiciary into the legislative process to extrapolate restrictions upon the formulation of such an economic policy from those deeply rooted notions of justice which the Due Process Clause expresses ....."
>
> "Suffice it to say that since Congress fixed the quotas on a historical basis it is not for this Court to reweigh the relevant factors and, perchance, substitute its notion of expediency and fairness for that of Congress. This is so even though the quotas thus fixed may demonstrably be disadvantageous to certain areas or persons. This Court is not a tribunal for relief from the crudities and inequities of complicated experimental economic legislation."

61. It is important to remember that the division of the industry on a zonal basis for the purpose of price determination has been accepted without question by almost all the producers with the exception of a few like the petitioners. Even if it is true that the petitioners as individuals are at a disadvantage and have suffered losses on account of the present system - an assertion which has not been established and which by its very nature is incapable of determination by judicial review - that is not sufficient ground for interference with the impugned orders. We are not satisfied that the decisions of this Court in Anakapalle ((1973) 3 SCC 435 : (1973) 2 SCR 882) and Panipat ((1973) 1 SCC 129 : (1973) 2 SCR 860) require reconsideration in any respect. We see no merit in the challenge against the impugned orders. The civil writ petitions are, in the circumstances, dismissed. However, we do not make any order as to costs.

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