

Shri Malaprabha Coop. Sugar Factory Ltd.

Vs

Union of India and Another

IAS. Nos. 5-6 Of 1995 In Civil Appeals Nos. 122-23 of 1981

28.01.1997

ORDER

1. A batch of civil appeals (including the above-mentioned two appeals), special leave petitions, writ petitions, transfer petitions and transferred cases challenging the fixation of price of levy sugar for the years 1974-75 to 1979-80, by orders issued under Section 3(3-C) of the Essential Commodities Act, 1955, was disposed of by this Court by a common judgment dated 22-9-1993 (Shri Malaprabha Coop. Sugar Factory Ltd. v. Union of India, (1994) 1 SCC 648). This Court held that the impugned orders/notifications were bad as the price was not fixed in accordance with the relevant provisions of law. However, it did not quash the notifications as they would have led to a nebulous situation during the interregnum till re-fixation of price. Instead of quashing the said notifications it directed the Union of India to amend the notifications taking into account the liability of producers of sugar under clause 5-A of the Sugarcane (Control) Order, 1966 (hereinafter referred to as the "1996 Order"), having regard to the factors mentioned in Section 3(3-C) of the Act. The Government was also directed to issue the amended notifications by 31-12-1993.

2. The Union of India was not satisfied with the judgment and, therefore, filed Review Petitions Nos. 211 and 212 of 1994 on 5-11-1993. They were dismissed on 23-2-1994. The Union of India had also filed an application on 24-12-1993 for directions/clarifications and extension of time. The clarification was sought for on the following ground :

"It is submitted that the decision of this Hon'ble Court lends itself to two different interpretations as mentioned below :

(a) The amount of additional cane price payable by sugar factories at the end of each season is to be added to the SMP of sugarcane while computing the element of cost as per Factor 'A' of Section 3(3-C) of the Essential Commodities Act, 1955 for purposes of price fixation;

(b) The levy sugar prices may be re-fixed taking into account only Factors 'A' to 'D' of Section 3(3-C) of the Essential Commodities Act, 1955."

It wanted this Court to clarify :

"... whether the revised levy sugar price should be the sum total of Factors 'A', 'B', 'C' and 'D' of Section 3(3-C) of the Essential Commodities Act in case of price fixation."

3. That application was dismissed with costs but the time for implementation of the judgment was extended up to 30-11-1994 peremptorily. In spite of this direction the Government did not issue the required notifications within time. It issued the following six notifications on 22-2-1995 :

1. No. GSR 76(E) Ess. Com. /Sugar dt. 22-2-1995 - 1974-75.
2. No. GSR 777(E) /Fss. Com. /Sugar dt. 22-2-1995 - 1975-76.
3. No. GSR 78(E) /Ess. Com. /Sugar dt. 22-2-1995 - 1976-77.
4. No. GSR 79(E) /Ess. Com. /Sugar dt. 22-2-1995 - 1977-78.
5. No. GSR 80(E) /Ess. Com. /Sugar dt. 22-2-1995 - 1978-79.
6. No. GSR 81(B) /Ess. Com. /Sugar dt. 22-2-1995 - 1979-80.

4. It is the grievance of the applicants that the said notifications have been issued in disregard and contravention of the judgment of this Court inasmuch as the Government, while re-fixing the levy sugar price for the said six years, has failed to include in such re-fixation the element of additional cane price payable by the producers under clause 5-A of the 1966 Order. They, therefore, want this Court to give appropriate directions to the Union of India to forthwith comply fully and effectively with the judgment by Issuing supplemental notifications providing for additional levy sugar price. Applicant 1 in both these applications is the Indian Sugar Mills Association and it has filed the applications on behalf of all its members. Applicants 3 to 33 are some of its members and were parties to the above-referred batch of cases. Though the Government, while issuing the said six notifications, did not take into consideration the additional cane price payable by the producers of sugar under clause 5-A yet the stand taken by them is that the said notifications are consistent with the judgment of this Court. The contentions raised in this behalf by them are the same as were taken earlier while the said batch of matters, the review applications and the applications for clarification were heard. In order to appreciate whether there is any substance in the contentions raised by the respondents it is necessary to recall the rival submissions made earlier and how they were dealt with by this Court.

5. The challenge to the fixation of price of levy sugar was twofold. It was challenged on the ground that it was not determined in accordance with Section 3(3-C) of the Act inasmuch as the price was fixed without regard to the four factors specified therein. The submission in that behalf was that while fixing the price under Section 3(3-C) regard must be had to the producer's liability under clause 5-A of the 1966 Order which provides for payment of additional minimum price to be paid by the producer of sugar to the sugarcane grower and, therefore, what is statutorily payable to the grower has necessarily to be included as an element of Factor 'A' of Section 3(3-C). Moreover, the minimum price payable under Section 3(3-C) and the additional minimum price payable under clause 5-A are integral components of manufacturing cost under Factor 'B'. The second ground of challenge was that mopping up of the entire excess realisation by sale of free sugar was also incorrect in view of clause 5-A as that would result in total denial of any return on the capital employed in the business of manufacturing sugar, resulting in not even recovering the actual cost of production. Though prior to 1-10-1974, the date on which clause 5-A was added, 100% mopping up, that is, taking the entire realisation by sale of free sugar into consideration for fixing price of levy sugar was permissible, after that date only 50% could be considered for that purpose.

6. On the other hand, it was contended that the objectives of Section 3(3-C) and clause 5-A are different. Whereas Section 3(3-C) deals with fixing of price of levy sugar, clause 5-A deals only with the amount payable to the canegrower. Thus, clause 5-A cannot have any relevance for determination of price of levy sugar. It was submitted that price of levy sugar has to be fixed in

advance whereas determination of the share of cane-grower under clause 5-A comes into operation only after the sugar year is over. The liability of payment of additional cane price under clause 5-A would arise only in case of surplus from sales of both levy and free sugar after adjustment of the unit cost of production. This surplus may or may not arise. Therefore, it cannot be regarded as a statutory or mandatory payment. As regards mopping up of the extra realisation by sale of free sugar, the contention raised by the Government was that even after introduction of clause 5-A, it being an independent provision, it was open to the Government to mop up the entire extra realisation, even though clause 5-A entitles the producer to retain 50% of the extra realisation as his share to meet with his other financial obligations and liabilities.

7. This Court rejected the contention that Section 3(3-C) and clause 5-A are totally independent and held that "if the determination of minimum price of sugar and fixation of the price of levy sugar under quantity of sugar to be supplied by the producer are interconnected, then they must be read as a whole and not separately as though each is distinct". With respect to mopping up of extra realisation on sale of free sugar for the purpose of determining price of levy sugar this Court held that according to the new pricing policy containing in clause 5-A the producer became entitled to 50% of such excess realisation from 1-10-1974 and, therefore, it was not open to the Government to mop up his share also while fixing the price of levy sugar. We need not refer to this aspect of mopping up further because that is really not relevant for deciding these applications. We may only state that under Factor 'D' of Section 3(3-C) extra realisation on sale of levy-free sugar is a relevant consideration and, therefore, the Government can take it into account to enable it to fix levy price at a lower level. As explained by this Court in that judgment the effect of mopping up is to depress or reduce the levy sugar price.

8. This Court construed clause 5-A as introducing a new pricing policy which conferred a benefit on the producer by providing that he shall be entitled to retain 50% of the extra realisation from sale of levy- free sugar. At the same time, it created a new liability for him by providing that he shall share the extra realisation from sale of levy- free sugar with the cane sugar on 50 : 50 basis. In view of this new liability this Court held that the Government was bound to take that also into account while fixing the price of levy sugar, without specifying as to whether that liability became a component of Factor 'A' or Factor 'B' or both those factors of Section 3(3-C).

9. As regards the direction to take into account the liability of the producer of sugar under clause 5-A what is now submitted on behalf of the respondents is as under :

"... it is submitted that this part of the directions was complied with by not mopping up the extra realisations on account of sales of free-sale sugar. While determining the originally notified prices, the extra realisations were mopped up for purposes of determination of the prices. This had resulted in a reduction in the prices to a level lower than the price to which the sugar producers would have been entitled to in terms of the provisions of the aforesaid Section 3(3-C)."

10. The respondents have also tried to support their action by contending that clause 5-A is interconnected with clause 3 of the 1966 Order and Section 3(3-C) is an independent provision. Therefore, the direction given by this Court cannot be interpreted to mean that the additional cane price fixed in terms of clause 5-A should also be taken into account as a cost element in addition to those specified in Section 3(3-C). It is also submitted that it is also not feasible to include the additional cane price payable under clause 5-A in the minimum cane price payable under Section 3(3-C) as the two exercises are required to be done at two different stages and the additional cane price is payable only in case of surplus. It was lastly contended that a three-Judge Bench of this

Court has upheld on 20-2-1996 the levy prices fixed for 1982-83 in TC No. 9 of 1990 and that would mean that this Court has now accepted the contention of the Government that it is not required to include the additional cane price payable under clause 5-A while determining the price of levy sugar under Section 3(3-C).

11. All these contentions except the last one were raised by the respondents earlier while the above batch of matters, the review applications and the applications for clarification were heard by this Court. All those contentions have been rejected and, therefore, it is really not open to the respondents to raise them again. It appears to us that the respondents, like an ordinary litigant, are trying to find excuses for not complying with the judgment of this Court merely because it is not palatable to them. The direction given by this Court in para 109 of the judgment is quite clear and does not lend itself to two interpretations or any confusion as contended by the respondents. In unambiguous terms this Court has directed the Government of India to take into account the liability of the manufacturer under clause 5-A of the 1966 Order as regards cane price and refix the price of levy sugar. Obviously, the price of levy sugar has to be fixed having regard to the factors mentioned in Section 3(3-C) of the Act and, therefore, this Court while giving the aforesaid direction also directed them to refix the price of levy sugar having regard to those factors also. The doubt or confusion, if any, appears to us to be the result of unwillingness of the Government to give up its views and accept and implement the decision of a this Court.

12. The observation, in para 104 of the judgment that the amount which the producer of sugar is entitled to retain cannot be taken into consideration for determination of the price of levy sugar, was made in the context of mopping up of the extra realisation. The issue was whether the entire extra realisation or only 50% thereof could be mopped up, in view of the new pricing policy contained in clause 5-A, for depressing the levy price. Since by the new pricing policy a benefit was sought to be conferred on the producer of sugar by making him entitled to retain 50% of the extra realisation, this Court held that the said amount cannot be taken into consideration for determination of the price of levy sugar. That was entirely a different aspect. The observation which is made in para 109 and the direction given therein is with respect to the aspect of sugar producer's liability to pay additional sugarcane price. Clause 5-A being interconnected with Section 3(3-C), this new liability would certainly get projected into Factors 'A' and 'B' of Section 3(3-C). As earlier pointed out mopping up of extra realisation is an element of Factor 'D' of Section 3(3-C). Thus the contentions raised on behalf of the respondents even otherwise also do not deserve to be accepted.

13. The order that was passed by this Court on 20-2-1996 in Transferred Case (Civil) No. 9 of 1990 was in respect of levy sugar price for the year 1982-83 and, therefore, it cannot have any bearing on the fixation of price of levy sugar for the years 1975-76 to 1979- 80. Moreover, this Court, while passing the said order, has clearly stated that "... this matter is not covered by the decision of this Court in Shri Malaprabha Coop. Sugar Factory Ltd. v. Union of India (Shri Malaprabha Coop. Sugar Factory Ltd. v. Union of India, (1994) 1 SCC 648) ". Even if the Government has omitted to take into consideration one unfavourable element, namely, mopping up of excess realisation it cannot justify its omission to take into consideration another relevant element which is favourable to the producer of sugar.

14. We, therefore, allow these applications and direct the Government to issue additional orders/notifications in terms of the directions given by this Court in the above-referred batch of cases.