The Panipat Co-Operative Sugar Mills vs The Union Of India on 6 November, 1972

Equivalent citations: 1973 AIR 537, 1973 SCR (1) 860, AIR 1973 SUPREME COURT 537, 1973 (1) SCC 129, 1973 2 SCR 860, 1973 2 SCJ 665

Author: J.M. Shelat

Bench: J.M. Shelat, A.N. Grover, Kuttyil Kurien Mathew, Y.V. Chandrachud

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           PETITIONER:
THE PANIPAT CO-OPERATIVE SUGAR MILLS

        Vs.

RESPONDENT:
THE UNION OF INDIA

DATE OF JUDGMENT06/11/1972

BENCH:
SHELAT, J.M.
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GROVER, A.N.
MATHEW, KUTTYIL KURIEN
MUKHERJEA, B.K.
CHANDRACHUD, Y.V.

CITATION:
 1973 AIR  537            1973 SCR  (1) 860
 1973 SCC  (1) 129
 CITATOR INFO :
 F          1973 SC 734  (3,22)
 D          1974 SC 366  (62)
 RF         1975 SC 460  (13,15)
 RF         1978 SC1296  (33,64)
 RF         1983 SC1019  (34)
 R          1987 SC1802  (9)
 F          1987 SC2351  (9,12)
 RF         1990 SC 334  (103)
            1990 SC1277  (5,6,12,13,14,23,26,30,40,42,4
 RF         1990 SC1851  (55)
 R          1991 SC 724  (13)


ACT:
Essential Commodities Act (10 of 1955), s-3 (3C) cls. (a) to
(d)-Scope of.
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HEADNOTE:
From 1958 and even earlier, ex-factory prices of sugar were worked out on the basis of cost-schedules prepared by expert bodies appointed for that purpose. The prices in the cost schedules were prepared in respect of the entire production of sugar and not in relation only to that part of it which was required to be sold to government (referred to as levy sugar), although, partial control in one form or another was in vogue. Such cost-schedules were prepared on the basis of average duration and recovery, the minimum price of cane, the average cost of production in the various zones, taxes and a fair return on the capital employed in the industry.
In 1967, the Central Government was confronted with the two problems : (a) the deterioration in the sugar industry, and (b) the conflicting interests of the manufacturer, the consumer and the cane grower. Accordingly Government announced its policy of partial control under which 60% of the output of sugar would be acquired and the balance of 40%would be left for free sale. To implement this policy sub-s.3 (3C) was enacted in the Essential Commodities Act, 1955. Under the sub-section there must be an order under s. 3(2) (f) whereby a producer is required to sell sugar to the Government. There shall then be paid to the producer an amount there or, that is, for such stock of sugar as is required to be sold; and 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 cls. (a), (b), (c) and (d) of s. 3(3C). Clause (a) provides for the minimum price, if any, fixed for sugar cane by the Central Government under s. 3; Cl. (b) refers to the manufacturing cost of sugar, Cf. (c) to the duty or tax, if any or payable thereon; and Cl. (d) to the securing of a reasonable return on the capital employed in the business of manufacturing sugar. The words 'notwithstanding anything contained in sub-s.(3) suggests that the amount payable to the person required to sell the stock of sugar would be with reference to the price fixed under sub-s (3C). [865 E; 868 F-H; 870 D-G; 874B]
In pursuance of the power reserved to it under s.3(2)(f) and s.3(3C) the Central Government required sugar factories, including the appellant companies to sell to it 60% of their production during 1970-71 at prices fixed by it under the Sugar (Price Determination) Order, 1971. The prices were fixed on the principles laid down by the Tariff Commission and other expert bodies. The appellants filed writ petitions in the High Court for quashing the Order and for refixation of the ex-factory price for 1970-71 in respect of the sugar required to be sold to the Government under s.3(2)(f). The High Court dismissed the writ petitions. In appeal to this Court it was contended by the appellants that

sub-section (3C), and its cl. (d) must be construed to be dealing with levy sugar only, that a reasonable return under cl. (d) should be assured unitwise, and that the profit on the free sale of sugar should not be taken into
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account in considering whether a reasonable return has been allowed on the capital employed.
Dismissing the appeal,
HELD : On the construction of sub-s. (3C) and on the evidence produced there is no case for quashing the Sugar (Price Determination) Order, nor, for refixation of the price fixed by the Government under the sub-section. [881 D]
(a) The sub-section provides two things, (1) the determination by the Government of a fair price during the process of which regard shall be had to the four matters set out therein, and (2) payment to the manufacturer, part of whose stock is levied, an 'amount therefor', calculated with reference to 'such price' as the Central Government may determine. The words 'amount therefor' mean the amount to be paid to the manufacturer in respect of such quantity of stock as is required to be sold Linder an order made with reference to sub-s. (2) (f). That amount is therefore referable to the stock of sugar specified in such order, that is to say, the levy sugar. The words 'such price of sugar' relate to the price which the Central government has to determine having regard to cls. (a), (b), (c) and (d). Though the payment would of course be for the- stock required to be sold to Government, there is nothing in sub-s. (3C) to suggest that the price to be determined is to be with respect to that part of the stock of a particular manufacturer which is required to be sold to the Government. [871.A-E]
(b) A fair price for sugar had to be such that would harmonise and satisfy at least to a reasonable extent all the conflicting interests. It could not mean the actual cost and return of every individual unit because, (i) it would be impracticable and (ii) because it would be rewarding the inefficient and the uneconomic. The basis of a fair price would be cost schedules worked out with respect to a reasonable, efficient and economic representative cross-section of the industry. A claim that such a price had to be determined unitwise and a reasonable return is to be ensured to each unit or that such a price with such a return should only be in respect of that part of its stock required to be sold under sub-s. 3(2)(f) would be inconsistent with the concept of partial control, the background in which it was evolved, and the objects which it attempted to secure. Such a policy meant determination of a fair price on the basis of which a producer would be paid for part of stock required to be sold to Government. The fair price would have to be determined having regard to the four factors set out in the subsection. Though factors (a) and (c) would be static, factor (b) would largely depend on

variables, such as duration and recovery. the prices of fuel, labour etc. differing from zone to zone or even within the same zone, necessitating the averaging and costing of ,a representative cross-section of units. Therefore, fair price could only mean securing a reasonable return to the industry as a whole and not to each unit, or in respect of only the stock required to be sold compulsorily to the Government. [873 H; 874 G-H; 875 A-F]
(c) This does not however mean that Government can fix any arbitrary price, or on extraneous considerations, or a price which does not secure a reasonable return on the capital employed in the industry. Such a fixation would evoke a challenge, both on the grounds of its being inconsistent with the guidelines built in the subsection and its being in contravention of Arts. 19(1)(f) and (g) and 31 of the Constitution. [875 F-H]
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[on the materials placed before it the Court found that the price fixed with respect to the appellants ensured a reasonable return on the capital employed and that there was no necessity for its refixation.]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1357 to 1359 of 1972.

Appeals by certificate from the judgment and order dated January 10, 1972 of Delhi High Court at New Delhi in Civil Writ petitions Nos. 405, 381 and 486 of 1971.

H. L. Sibal and Bishamber Lal, for the appellants (in all the appeals).

L. N. Sinha, Solicitor-General of India, G. L. Sanghi and S. P. Nayar, for the respondent.

The Judgment of the Court was delivered by SHELAT, J. These three appeals, by certificate, arise out of three writ petitions filed in he High Court of Delhi for quashing the Sugar (Price Determination) Order, 1971 made under s. 3(3C) of the Essential Commodities Act, 10 of 1955, and for a direction requiring the Central Government to refix the ex-factory price for 1970-71 in respect of sugar required to be sold to Government under s. 3 (2) (f) of the Act. The High Court dismissed the writ petitions and hence these appeals.

The appellants are three public limited companies having factories in Haryana State where they carry on the business of manufacturing and selling sugar, an essential commodity within the meaning of the Act. The Act empowers the Central Government to control the production and distribution inter alia of sugar with the object of maintaining its supply and its equitable distribution.

Under sec. 3, the Central Government has been authorised to require a manufacturer of sugar to sell to it or to a State Government or any other authorised person either the whole of his stock or part of it at a fair price fixed by it. In pursuance of power reserved to it under s. 3 (2) (f) and s. 3 (3C), the Central Government required the sugar factories, including the appellant companies to sell to it 60% of their production during the year 1970-71 at prices fixed by it, the price fixed for the factories in Haryana zone under the impugned order being Rs. 124.63 per quintal. The principal questions arise in these appeals : (1) what is the true interpretation of S. 3(3C), and (2) whether the price of Rs. 124.63 was in accordance with the provisions of s. 3(3C) ?

Before we proceed to consider these questions it would, we think, be better to set out briefly the history of control over sugar production and its distribution and the method followed in the fixation by Government of the fair, or what has for brevity's sake been named, the levy price of sugar. The concept of statutory control over sugarcane is as old as 1934 when the Central Sugar Cane Act, 1934 was enacted, Under that Act and orders passed thereunder Government used to fix the minimum price for cane. Since 1950 and later on under the Sugarcane (Control) Order, 1955, such minimum price for cane used to be fixed having regard to (a) the cost of production of cane, (b) the return to the growers from alternative crops, and (c) fair price of sugar to the consumer.

So far as sugar is concerned, statutory control over it was first imposed in 1942 under the Sugar and Sugar Products Control Order, 1942. The Sugar Controller thereunder regulated production, distribution and prices of sugar. From May 1, 1942, no sugar factory was permitted to effect sales except to authorised persons. This position continued until December 8, 1947 when sugar was decontrolled. In 1949, statutory control was once more imposed under which ex-factory price of Rs. 76.35 per quintal for D-24 grade was fixed, as during that year sugar production declined. There was also a substantial diversion of cane to gur and khandsari industry. Control over sugar was relaxed in 1950 in that production over 90% of the total production of each factory was allowed free sale. This policy was subsequently modified and 95% of the average production of each factory during the two preceding years was fixed as basic quota and half of the production in excess of that quota was allowed free sale, while the other half together with the basic quota was reserved for sale at controlled prices.- Since conditions appeared to improve, control was taken off in 1952-1953, except that a small portion of production was reserved for sale at controlled prices. But as prices spiraled, Government in April 1954 requisitioned 25% of the stock for distribution on a tender basis. During 1954-55 to 1956-57 no controlled prices were fixed. By 1958 the prices began to soar and the Government once more decided to impose control.

During, 1958 Government requested the Tariff Commission to examine the cost structure of sugar and fair price which should be paid to the sugar industry. Such an exercise was not new, for, as early as 1947, and in 1951 and 1955 these questions had been gone through, in 1947 by one Dr. Srivastava, and in later years by expert committees appointed by Government. These committees worked out cost schedules and fair price to be paid to the industry but on an All-India basis. These cost-schedules were not fair as they did not take into account disparities existing from region to region in :the matter of price of cane, percentage of recovery and duration of the crushing season. The Tariff Commission in 1959 did away with the all-India cost-schedule and instead constructed four zonal cost schedules having regard to their respective duration and recovery percentage on which a fair price could be fixed. Government then requisitioned the stock of sugar, and distributed sugar at fixed. prices. In September 1961, the Government ff.-moved control as the situation had improved. But the next two years witnessed a substantial fall in production and rise in prices. Government then passed the Sugar (Control) Order, 1963 under which it fixed ex-factory prices for different regions and regulated distribution according to quotas fixed for each State. Government in the meantime had worked out cost-schedules for as many as 22 zones, according to which, it fixed ex-factory prices ranging from Rs. 116 to Rs. 125 per quintal.

On August 3, 1964, Government appointed the Sugar Enquiry Commission. The Commission in its Report deprecated the Government's practice of increasing the number of zones to 20 and more and recommended only five zones. The Commission worked out the cost-schedules for these five zones on the basis of duration and recovery percentage in each of the zones and on the basis of minimum cane price, cess or tax, commission of co-operative societies, transport charges, driage and other expenses, packing, grade differential and. selling expenses. The Commission recommended that while working out the ex-factory prices for each year on the basis of these cost-schedules Government should make adjustments whenever any escalation took place in cost elements such as wages, taxes, packing charges, etc. On the question of return, the Commission observed as follows :

> "The Tariff Commission, in its last inquiry (1958) recommended a return at 12 per cent on capital employed. In doing so, it took into consideration factors such as the dependence of the industry on an agricultural raw material, the supply of which is aff ected by several imponderables, e.g., weather and pests and diseases. A number of factories located in favorable regions have made ample profits.

In fact, the sample factories earned as much as 15.69 per cent in 1963-64-Sizeable expansions in capacity have taken place. The Commission is satisfied that the rate of return of 12 per cent is not unreasonable and should encourage expansion of the industry. The Commission is aware that the rate of return indicated will not be realised by each individual unit in each zone. Majority of the units in a zone, however, should be able to earn this return if they maintain a reasonable degree of efficiency. The method adopted and followed by the Commission in assessing the working capital is the same as was adopted by the Tariff Commission in its 1959 Inquiry."

There were two criteria for fixation of ex-factory prices; (1) estimated cost of production determined according to the cost schedules prepared by the Tariff Commission in 1959 and adjusted from time to time to provide for increase in any of the elements of costs, and (2)average of prices at which sugar was sold in an area during two to three months immediately before April 1, 1963. From 1964-65 to 1966-67 Government fixed ex-factory prices on the basis of the cost- schedules worked out by the Sugar Enquiry Commission. But the year 1966-67 turned out to be- the worst year in the decade owing to draught. Production of cane fell by 22% and that of sugar by 40 % as compared to 1965-66. It was felt that the outlook for 1967-68 would be gloomier still as a further fall in the area under cane plantation would be by about 11 %.

To avoid such a prospect some steps had to be taken providing incentives for maximising sugar production and increasing the competitiveness of sugar factories, vis-a-vis gur and khandsari factories in securing cane by offering prices higher than the, floor prices.. Accordingly, Government announced in August 1967 its policy of partial control under which 60% of the output of sugar would be acquired and the balance of 40% would be left for free sale. To, implement this policy, Government secured the passage of sub-s. 3 C in s. 3 of the Act through Parliament. Having done that, it fixed the ex-factory prices on December 8,1967 which as finalised in May 1968 varied from Rs. 145 to Rs.169.50 per quintal. These were fixed on the principles laid down by the Tariff Commission and the Sugar Enquiry Commission earlier, viz., on, the basis of (a) floor price of cane fixed by Government, (b) cess or tax payable thereon, (c) the manufacturing cost, and (d) a reasonable return on capital employed. Since the cost- schedules worked out by the Sugar Enquiry Commission had by now become obsolete,, Government in 1968 requested the Tariff Commission to construct fresh cost schedules. The Commission selected 68 out of 200 working units in the industry for a. detailed cost study. For the rest, it sent out elaborate cost forms for submitting the, requisite data pertaining to 1966-67. For Haryana, out of the three units, one was selected for the detailed cost Study. The Commission first worked out actual cost of production state-wise, by taking into account a number of units in each State, their installed average crushing capacity, the cane actually crushed per day, and the average yield of sugar. In this way the ex-factory cost per quintal of sugar came to Rs. 104.43. This figure took into account the actual price paid for cane, which was often higher than the minimum price fixed by Government, harvesting charges where incurred,. transport, cess/purchase tax, and factory conversion charges which included salaries/wages, power, fuel, stores, repairs, maintenance, packing and other overheads. These average costs represented the average costs of sugar covering all grades. But the factories in different States had different durations depending on the availability of sugar cane in adequate supplies and different recoveries of sugar differ- ing from factory to factory. A direct comparison of actual costs between factories or States would, therefore, have led to unrealistic results. These differing factors had, therefore, to be reduced to a common measure. For these purposes the Commission took into account five years average recovery and duration of a region as the base. Having regard to the wide disparity in duration and recovery of sugar, the costs were initially reduced to a standard duration of 120 days (of 22 hours each) with a uniform recovery of 10 per cent so as to have a comparison of costs as between units in a zone. Also the differential relating to different grades of sugar produced by the units was adjusted and a common schedule for D-29 grade was evolved. On this basis the conversion charges for each State were worked out. These did not include, transport charges on cane, selling expenses and return. On such calculation, the conversion charges for Haryana, including depreciation, at the rate permissible under the Income Tax Act came to Rs. 19-58 as against the All-India weighted average of Rs. 25.20 per quintal. For salaries/'wages, the recommendations of the Central Wage Board for Sugar Industry formed the base. For stores and repairs the cost and variations therein from State to State were based on the index of wholesale figures published by the Economic Adviser to the Ministry of Industrial Development and Company Affairs. For future an incidence of increase of 3% per annum was taken into account, i.e., for the years 1968-69 to 1970-71. The minimum bonus at the statutorily payable and managerial expenses were included in the costs of conversion; so also the transport charges from the factories to railway stations and the loading and unloading charges. For this, the base was the actual charges in 1966-67 which came to 15 paise per quintal for most of the States. For rehabilitation, the Commission suggested Rs. 2 per quintal.

Owing to the wide ranging differences in the capital costs of various units as also differences from State to State, the Commission did not think it realistic to recommend return worked out according to the conventional method. A calculation of return of a uniform percentage on the basis of such widely varying capital costs from unit to unit and State to State would tend to vary the portion of the return margin substantially and confer an unwarranted benefit on the low cost units. At the same time, a reasonable return was indispensable if expansion was to be encouraged and fresh capital investment in the industry attracted, which according to the Reserve Bank's industry-wise study, showed the lowest profit percentage in sugar industry of all other industries. The Commission, therefore, suggested a uniform amount per quintal as a margin to be added to the other costs in arriving at the fair price of sugar. The Commission for the reasons aforesaid was of the view that 'an amount of Rs. 10.50 would be a fair return which would be equivalent to 12.5 % on the zonal averages of capital employed. According to Appendix 37 to the report, the average return at 12.5% on capital employed on the units in Haryana worked out at Rs. 10.40 per quintal to be added to the fair price worked out for that region. By adopting the standardised figure of Rs. 10.50 per quintal the range of variations from region to region was expected to be narrowed down from Rs. 11.88 in the case of South Bihar to Rs. 16.94 in the case of Orissa, Kerala, Assam and West Bengal. It is quite clear that what the Commission did was to con- struct cost schedules and fair price of the entire production and not merely of the levy sugar. The return and rehabilitation also were worked out on the basis of the capital employed in the entire production and not the capital employed for the production of levy sugar. Thus, in Table 9.6 at page 80 of its report, the Commission included Rs. 12.50 (being return and rehabilitation) in the ex-works price of sugar. There is nothing in that table which would suggest that it was confined to levy sugar. Indeed Ch. 9 in which this table appears is headed "Cost Structure and Price Fixation", that is the ex-works price In calculating the ex- factory price, the Commission took the minimum price of cane fixed by Government and not the actual price paid by the manufacturer as was, also done by the Commission in 1959 and by the Sugar Enquiry Commission in 1955. On this basis, the ex-factory price for Haryana worked out to Rs. 128.69 per quintal (i.e., cost of cane Rs. 89.73, conversion charges Rs. 26.46, return and rehabilitation Rs. 12.50) for' the year 1966-67 on the basis of the average of the past five years' duration and recovery. The cost of cane would of course depend on the minimum price fixed for each year by Government. The figure of Rs. 69.73 was the minimum price fixed for 1966-67. It also did not include the co-operative society's commission, if any, the purchase tax or cess and the margin' for cane driage.

4--L521Sup.CI/73 These were expected to be worked out by the authority fixing the fair price for each zone for a particular year. The cost schedule for conversion in the light of duration and recovery for each zone was made up of expenses classified as constants, variables, semi-variables and fixed expenses. For Haryana, it worked out to Rs. 26.46 per quintal on the basis of average duration of 125 days (of 22 hours) and 8.70 recovery. The cost schedule made up of the aforesaid expenses did not include (i) price of cane, (ii) commission to cooperative society, if any, (iii) purchase tax or cess and (iv) driage of cane, as these would be taken into account while fixing the minimum cane price. The constants comprise packing and grade differentials which would be static. The variables comprise seasonalexpenses, i.e.other than those incurred normally when crushingdoes not take place, such as wages of seasonal recruits excluding allowances for retainers, relevant parts of stores, repairs, transporton cane, shift depreciation, overheads and credit for recoveries.Semi-variables would comprise power and fuel and retainer allowances which would vary with duration and recovery. Fixed charges would be expenses other than those covered by the three aforesaid expenses and which are of a fixed nature irrespective of duration and recovery. The sum total of these classified expenses would make up the conversion costs. To these and the minimum price of cane would be added Rs. 2 for rehabilitation and Rs. 10.50 as return on capital employed and excise duty. The Government did not accept the recommendation as to rehabilitation and deferred its decision thereon for reasons stated in its resolution dated February 20, 1970, by which it accepted the other recommendations as also the cost-schedules worked out by the Commission, the number of zones, return of a fixed sum of Rs. 10.50, etc. The history of control over sugar set out above shows that right from 1958 and even earlier, ex-factory prices of sugar were worked out on the basis of cost-schedules prepared by expert bodies appointed for that purpose, that such prices and cost schedules were prepared in respect of the entire production and not in relation only to that part of it which was required to be sold to Government, although partial control in one form or the other was in vogue for some periods before 1967, that such cost schedules were prepared on the basis of average duration and recovery,, the minimum price of cane, the averaged cost of production in the various zones, taxes, and lastly, a return on the capital employed, which as stated above was fixed at the static figure of Rs. 10.50 per quintal, that being the amount considered a fair return on capital employed in the industry. Both the Central Government and Parliament were aware of the methods followed by these expert bodies in framing cost-schedules on the basis of which ex-factory prices were fixed, the problems which the Government was faced with in securing adequate supply of sugar and its equitable distribution at reasonable price to remedy which sub-s. 3C was enacted. It is in the light of this background that the provisions of that sub-section can be properly understood. The Act, as its long title suggests, was enacted to provide for the control of production, supply and distribution of, and trade and commerce in, certain commodities, sugar being one of such commodities. Sec. 3 empowers the Central Government, if it is of opinion that it is necessary or expedient to do so for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, to provide by an order for regulating or prohibiting production, supply and distribution thereof. Under its sub-section (2) cl.

(f), such an order in may require any person holding in stock any essential commodity to sell the whole or a specified part of it to the Central or a State Government or an authorised person and in such circumstances as may be specified therein. Sub-s. 3 requires that where any person sells any essential commodity in compliance with an order made under sub-s. 2 cl. (f), there shall be paid to him the price therefore (a) where the price can, consistently with the controlled price, if any, fixed under this section, be agreed upon, the a agreed price; (b) where no such agreement can be reached, the price calculated with reference to the controlled price, if any, or (c) where neither cl. (a), nor cl. (b) applies, the price calculated at the market price prevailing in the locality at the date of sale. Payment at market price would have to be made under this sub-section only when there is no agreed or controlled price. Sub-secs. 3A and 3B then make provisions with regard to sale of foodstuffs and food-grains. Under sub-sec. 3A, the Central Government is empowered, if it is of opinion that it is necessary so to do for controlling the rise in prices or preventing the hoarding of any foodstuff in any locality, to direct by a notification that notwithstanding anything contained in sub-se-,. (3), the price at which the foodstuff shall be sold in the locality in compliance with an order made under sub-sec. 2(f) shall be regulated in accordance with the provisions of this sub-section. When after the issue of a notification under this subsection, any person sells foodstuff of the kind and in the locality specified therein, in compliance with an order made with reference to sub-sec. 2 cl. (f), there shall be paid to the seller as the price therefore (a) the agreed price consistently with the controlled price, if any, (b) the price calculated with reference to the controlled price, if any, where no such agreement can be reached, or (c) where neither cl. (a), nor cl. (b) applies, the price calculated with reference to the average market rate as provided therein. Under sub-sec. 3B, where a person is required to sell any food-grains, edible oilseeds, or edible oils to the Central or a State Government, or to a person authorised in that behalf, and no notification in respect of such food-grains, oilseeds or oils has been issued under sub-sec. 3A or is in force, there shall be paid as the price for such food-grains, oilseeds or oils, (i) the controlled price, if any, or (ii) where no such price is fixed the price prevailing or likely to prevail during the postharvest period in the area to which the order applies. Both under sub-sec. 3A and 3B, the question of market price can only arise where there is no controlled or fixed price or price agreed consistently with the controlled price, if any. Each of these sub-sections makes a separate provision for tile price at which the commodities therein dealt with is to be paid. Sub-sec. 3C, with which we are presently concerned was in- serted in sec. 3 by sec. 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 subsec. 2 cl. (f), and the second is that there is no notification under sub-sec. 3A 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" 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 subsection and not the agreed price or the market price in the absence of any controlled price under sub-sec. 3A. The sub-section then lays down two things; firstly, that where a producer is required by an order with reference to sub-sec. 2(f) to sell any kind of sugar, there shall be paid to that producer an amount therefore, 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 cls. (a), (b),

(c) and (d) Unlike the preceding three subsections under which tile 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. The last words of the sub-section empower the Central Government to determine price either from time to time or for different areas, which means that it may determine zonal or regional prices, or for different factories, i.e., unit-wise, or for different kinds of grades of sugar.

The two concepts, viz., the amount payable to the producer and the price to be determined by Government are distinct and much of the confusion in interpreting the sub-section would be dispelled if they were seen distinctly. The words "amount therefore" mean the amount to be paid to the manufacturer in respect of such quantity of his stock as is required to be sold under an order made with reference to sub-sec. 2(f). That amount is, therefore, referable to the stock of sugar specified in such order, that is to say, the levy sugar. The words "such price of sugar", relate to the price which the Central Government has to determine having regard to cls. (a), (b), (c) and (d). The price to be so determined is not relatable or confined to the stock required to be sold, for the words are "such price of sugar" and not "the price for such sugar". This construction is fortified by the penultimate part of The sub-section which authorises the Central Government to determine zonal or unit-wise prices or prices for different kinds of sugar. The price to be determined by the Central Government is to be the rate at which the amount payable to the producer of such of his stock as is :required to be sold is to be calculated. There is thus a clear distinction between the amount payable to the producer whose stock is either wholly or in part required to be sold under an order made under sub.-sec. 2(f), and the price of sugar to be determined by the Government having regard to the minimum price of cane fixed by it, the manufacturing cost of sugar, the duty and tax paid or payable thereon and securing a reasonable return on the capital employed in the business of manufacturing sugar. In order to appreciate the meaning of cls. (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- sec. 3C 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 three-fold, to provide an incentive to increase production of sugar, encourage ex- pansion 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.-' Whether these objectives have, through, the working of the new sub- section, been realised or not is a different, matter. But there can be no doubt that these were the objectives, for which the sub-section was passed. The incentive to secure, increased production and expansion of the industry was to leave a certain portion of the stock free for sale in the open market, the assumption being that the industry would get a better price in such market than the price determined under the formula incorporated in sub-section 3C. The fair price, therefore, has to be determined on the mini- mum price of cane fixed by Government, the manufacturing cost. on the basis of zonal cost-schedules, the tax or duty applicable in the zones and must be so structured as to leave in the ultimate result to the industry a reasonable return on the capital employed by it in the business of manufacturing sugar. 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 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 cl. (d). In, this conclusion we derive a two-fold support, firstly, from the language used in cl. (d) itself, viz., a reasonable return on the capital employed in the business of manufacturing sugar, which must mean the business as a whole and not 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-sec. 2(f). This is clear from the heading of Ch. 9 of the Tariff Commission's report, 1969, "Cost. Structure and Price Fixation". Counsel for the appellants and for the several interveners, however, contended (1) that since sub-sec. 3C was enacted after the policy of partial control leaving a part of the stock for free market was decided upon, the sub-section must be held to deal with levy sugar only, and (2) that the language of the sub-section as also of its cls. (a), (b) and

(c) shows that it dealt with and was concerned with levy sugar only and that therefore cl. (d) must also be construed to be dealing. with levy sugar. It was urged that besides the necessity of giving to cl. (d) the same meaning as one would have to give to cls. (a), (b) and (c), if cl. (d) were to be construed to mean return on the whole of the capital employed, there would ensue a contradictory and even an anomalous result. For purposes of cl. (a), one would have to take the floor price of cane fixed by Government, but for cl. (d), the actual price of cane paid by a unit would have to be' taken into account for purposes of arriving at a figure which would leave a reasonable return to the producer, part of whose stock is required to be sold. Counsel also urged that if cl. (d) were construed to mean reasonable return on tile production of the entire stock and not levy sugar only, it would mean negativing the entire scheme of partial control which was intended to leave a reasonable return on that part of the stock which was required thereunder to be sold irrespective of the return obtained by sale of the rest of- his stock in a free market. 'Therefore, it would be contrary to that concept if the profits made in respect of free sugar were to be taken into account as a cushion if the fair price fixed for levy sugar was not equivalent to the actual cost of pro- duction and were to result in a return less than the reasonable return on that part of the stock, or even a deficit. Such a construction would, they argued, permit the Government to fix a price which would not leave such a return on the ground that sale of free sugar would bring in sufficient surplus to make up the deficit, if any, on the levy sugar. Counsel further urged that such a construction would also defeat the very object (if Partial control, in that, if a reasonable return was not assured to the manufacturer, lie was hardly likely to buy cane at a price higher thin the minimum fixed by Government, a purpose for which the partial control policy was evolved. To bring, in the return on free sugar for purposes of deciding whether a return guaranteed under cl. (d) was obtainable or not from the price fixed by Government would also be ushering a factor wholly extraneous to the sub-section. It would not be, therefore, right to bring into consideration free sugar which is not the subject-matter of sub-see. 3C. To accept these contentions would in our view mean dis- regarding (1) the language of the sub-section, and (2) the entire background in which it was enacted and the mischief it was intended-to remedy. As explained earlier, the sub- section provides two things: (a) the determination by Government of a fair price during the process of which regard shall be had to the four matters set out therein, and

(b) payment to the manufacturer part of whose stock is levied, an amount "therefore" calculated with reference to "such price" as the Central Government may determine. Though the payment would of course be for the stock required to be sold to Government, there is nothing in the sub-section to suggest that the price to be determined is to be with respect of that part of the stock of a particular manufacturer which is required to be sold to Government.

In deciding upon the policy of partial control and in having it incorporated in sub-sec. 3, the Central Government was contronted 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 report of the , Sugar Enquiry Commission 1965 and that of the Tariff Commission of 1969 highlighted the difficulties that plagued the industry and the necessity of harmonising the triple conflicting interests. The cane acreage was dwindling, as the incentives for that plantation were not as attractive as those for cereals and other agricultural pro- ducts. Part of that production was diverted towards production of gur and khandsari, leaving no scope for greater production of sugar, the necessity for which was being accentuated as the consumers' demand was rapidly increasing. The floor price of cane fixed by Government was intended to protect the farmer 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, had also to be. protected against the spiraling of sugar price and his needs, growing as they were, had to satisfied at some reasonable price. 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. The concept of fair price was not unknown, for, it had been worked upon from as early a time as 1937. That concept did not by any account mean the actual cost of production of every individual manufacturer. It had to be arrived at by the process of costing of a representative cross-section of manufacturing units. The history of the industry shows that such a process was being practiced through various formulas, in the beginning by working out an All-India cost-schedule, and when that was found to be unrealistic by working out zonal cost-schedules beginning with four and by 1969 with 15 such zonal cost-schedules. A fair price would not thus mean the actual cost and return of every individual unit, firstly, because it would be impracticable, and secondly, because it would be rewarding the inefficient and the uneconomic. An extreme example of such a unit is to be found in the compilation prepared by Dr. Singhvi where the duration of season of that unit was only seven days, and therefore, its cost came to over Rs. 600 per quintal. If such a product were left to the mercy of a total free market and the impact of free competitiveness in it, such a unit would hardly survive. The object of the policy of partial control cannot, therefore, mean to reward such units. The basis of a fair price would have to be built on a reasonably efficient and economic representative cross- section on whose workings cost-schedules would have been worked out and the price to be determined by Government under sub-sec. 3C would have to be built. A claim that such a price has to be determined unit-wise and a reasonable return has to be ensured to each unit or that such a price with such a return would be in respect of that part of its stock required to be sold under sub-sec. 2(f) would appear to be inconsistent with the concept of partial control, the background in which it was evolved and the objects which it attempted to secure. Such a policy meant determination of a fair price on the basis of which a producer would be paid for part of his stock required to be sold to Government. Such a price would have to be determined having regard to the four factors set out in the sub-section. Though factors

(a) and (c) would be static, factor (b) would largely depend on variables, such as duration and recovery, the prices of fuel, labour etc. differing from zone to zone and sometimes within the zone, necessitating averaging and costing by selecting a representative cross-section of units for that purpose and arriving at a cost-schedule which would do justice to the weak and the strong alike. If this be the true meaning of cl. (b), it must mean securing a reasonable return to the industry and not to each unit, irrespective of whether it is economic or reasonably efficient or not, or only in respect of its stock required to be compulsorily sold to Government. A unit-wise fixation of price as suggested by counsel, and payment on the basis of a price so worked out would mean perpetuating inefficiency and mismanagement, and depriving the partial control policy of the incentives for economy and efficiency inherent in it. We are, therefore, satisfied both on the language of the sub-section, the background in which it was enacted and the mischief the legislature sought to remedy through its working that the true, construction is that a fair price has to be determined in respect of the entire produce, ensuring to the industry a reasonable return on the capital employed in the .business of manufacturing sugar. But this does not mean that Government can fix any arbitrary price, or a price fixed on extraneous considerations or such that it does not secure a reasonable return on the capital employed in the industry. Such a fixation would at once evoke a challenge, both on the ground of its being inconsistent with the guidelines built in the sub-section and its being in contravention of Arts. 19(1)(f) and (g), and 31.

The constitutionality of the sub-section not being under challenge. in these appeals, the only question left for consideration is whether the price fixed under the impugned order, i.e., Rs. 124.63, is in consonance with s. 3(3C)? The ex-works price worked out in the Tariff Commission Re- port, 1969 for Haryana zone for the next three years, i.e., 1969-70 to 1971-72, based on the average recovery and average duration of the past five years (1963-64 to 1967-

68), i.e., 8.70% and 125 days, was Rs. 128.69 per quintal. That figure was made up of the following :

> 1. Wages and salaries Rs. 11.70: (2) stores, fuel and power Rs. 8.49: (3) repairs and maintenance Rs. 2.63: (4) packing charges Rs. 2.57: (5) overheads Rs. 0.75: (6) cane centre and cane .development Rs. 1.36: (7) depreciation (Income Tax Act rates) Rs. 3.60:
>
> (8) transport of cane Rs. 1.53: (9) less--Credits Rs. 0.75: (10) grade differential Rs.1.07: (11) return and rehabilitation Rs. 12.50: (12) selling expenses Rs. 0.15: (13) bonus Rs. 0.60-Total conversion charges Rs. 38.96: (14) cane and related costs Rs. 89.73: (15) ex-works price Rs. 128.69.

The figure of Rs. 89.73 arrived at on the basis of driage being Rs. 9.86and average recovery of 8.70% was worked out as follows :

> (1) Minimum price of cane fixed by Government Rs. 7.37: (2) Co-operative society's commission Rs. 0.13 and (3) Cess/purchase tax Rs. 0.24, Total Rs. 7.74=Rs.

89.73 per quintal sugar, (vide Table 9.6 and Appendices 35 and 36 at pages 89 and 212-214;

Report 1969).

The ex-works price of Rs. 128.69 included Rs. 2 per quintal for rehabilitation. That amount was not included by Government when it fixed the price of Rs. 124.63 on January 8, 1971 as the Government, while accepting the cost- schedules and other recommendations of the Tariff Commission, had deferred its decision on rehabilitation pending consultation with the concerned interests. (Vide Government Resolution, Ministry of Food and Agriculture, dated February 20, 1970). Deducting Rs. 2 from the ex-works price worked out by the Commission, the Commission's ex- works price would be Rs. 126.69 on the basis of 8.70% and 125 days" as average recovery and duration.

It would appear that barring the statement in the impugned order that Government had fixed the price at Rs. 124.63, the Government had not disclosed even in its return how it had worked out that price. At the instance of the appellants, the High Court, therefore, by its order dated September 14, 1971 called upon the Government to show the basis on which it had fixed the, price. The Government thereupon filed an additional affidavit of the Deputy Secretary to the Ministry of Agriculture dated September 14, 1971 according to which on the available data before it the price would come to Rs. 126.93. This figure took note of the, increase in the purchase tax by Haryana Government from 24 to 50 paise per quintal of cane. That was how the Government mentioned Rs. 8.003 as the price of cane per quintal instead of Rs. 7.37 which was the floor price fixed by Government for the year. Government also added Rs. 1.05 being the estimated impact of increase in wages recommended by the Second Central Wage Board, the added depreciation allowed through changes, in the Income Tax Act and increased cost in packing materials, the total of all the three having been worked out at Rs. 2.81 per: quintal of sugar. According to this affidavit, when Government was considering the fixation of price for 1970-71, it had before it the actuals as to recovery and duration for 1969-70 as also the. estimates supplied by the factories for 1970-71. From these, the Government came to the conclusion that there would not be any material difference in recovery and duration between the two years and that was why it decided to continue the ex-factory price for 1969-70 for the year 1970-71 also. The incidence of purchase tax for 1970-71 was placed at Rs. 2.06, higher than during the preceding year, because for 1969-70 it was from April 1, 1969, while in 1970-71 it was for the whole year. The estimates for recovery and duration for 1970-71 were on the actual recovery and duration for the preceding year which came to 8.76% and 187 days, as against the estimates given for that year by the factories, viz., 9.04% and 157 days. These were accepted for 1970-71 as, the only actuals available to the Government on January 8, 1971 were in respect of the month of November 1970, which obviously were too meagre for acceptance for the whole year. Annexures It and III to this affidavit show that as against the levy price of Rs. 124.63 fixed by Government, free sugar was sold during 1969-70 at prices ranging from Rs. 126.21 to Rs. 138.01, exclusive of excise duty, and from October 1970 to May 25, 1971 when sugar was totally decontrolled at rates ranging from Rs. 132.30 to Rs. 151.38. It is undisputed that during the period of six weeks when the stay order granted by the High Court operated the appellants sold sugar at about Rs. 150.

These figures were not accepted by the appellants, for, according to them, they sold free sugar during January 1971 to May 24, 1971 at prices ranging from Rs. 135.19 to Rs. 160.47, the average rate being Rs. 139.70 less Rs.1.07 differential-Rs. 138.63. As against the levy price worked out by Government at Rs. 126.93, the appellants' case was that on the actuals worked out for the year

1970-71, the price would be Rs. 129.42, thus causing to them a loss of Rs. 5.20 per quintal on levy sugar. The difference between the price calculated by the appellants and that calculated by the Government (Rs. 126.93) arises because of certain disparities in their respective figures, as also the percentage in recovery and duration. To the figure of Rs. 129.42, the appellants add additional cost of interest, increase in freightage by road and rail during the year, deterioration in quality, thus bringing the cost to Rs. 138.93. The loss on this calculation, according to them, would come to Rs. 3 lacs and odd on levy sugar which totaled 65,741 quintals. On Government's calculations based on the returns filed by the appellants, the Haryana factories realised Rs. 126.50 per quintal on levy sugar taking into account the different grades produced by them and Rs. 139.70 per quintal on free sugar upto May 25, 1971 when sugar was decontrolled. If levy sugar alone were to be taken into consideration, the loan per quintal of levy sugar would be the difference between Rs. 124.63 and Rs. 129.42, i.e., Rs. 6.20, and nearly double if the additional costs claimed by the appellants were to be admissible, which would raise their cost of production to Rs. 133.98. This calculation is of course on the basis that the return of Rs. 10.50 per quintal was altogether met, in the sense that-it was not expected to absorb items such as interest and the profits on free sugar were not to be taken into consideration for ascertaining whether a reasonable return on the ,capital employed was actually obtained or not by the industry.

The High Court, no doubt, did not hold the price of Rs. 124.63 as realistic and in view of the changes which had taken place during the year added in all Rs. 3.22, that is, Rs.1.16 increase in wages, Rs. 56 additional depreciation and Rs.1.20 as additional packing charges, totaling Rs. 2.92 and presumably Rs. 0.30 for increase in purchase tax. Adding Rs. 3.28 to the Government price, the High Court worked out the fair price at Rs. 127.85 instead of Rs. 124.63. We need not examine the correctness or otherwise of this addition as the Solicitor General told us that he did not ,challenge the correctness of this addition. On the basis of Rs127.85 being the correct price, the appellants would lose Rs. 3.22 per quintal on levy sugar, if the price realised on levy sugar alone were to be taken into consideration. The Solicitor General also conceded that purchase tax on cane in Haryana was increased during the year 1970-71 from 24 paise to 50 paise per quintal with effect from April 1, 1970 and that increase according to para 1 1 of the return, dated May 1971 was not taken into account as the Government was of the opinion that the price of 1969-70, which was adopted for 1970-71, contained sufficient cushion to absorb the impact of this increase. This opinion was based on the fact that the working results for the year 1969-70 turned out to be actually very much better than estimated. Counsel for the appellants, however, expressed his dissatisfaction with the increase by the High Court of Rs. 3.22 only on the ground that the High Court did not take cognizance of three items, viz., increase in purchase tax, increase in the rate of interest and increase in road and rail freightage. As already stated, the increase so in purchase tax appears to be included in Rs. 3.22, granted by the High Court for otherwise the three increases stated in the judgment, viz., increase in wages, increase in depreciation and increase in packing charges, would make the total of Rs. 2.22 only.

The largest addition in the price claimed by the appellants was Rs. 2.29 per quintal by way of additional interest. The basis for the claim was that owing to the production of sugar in 1969-70 being the all time highest, there were larger stocks lying unreleased with the factories both in the case of levy as well as free sugar, with the result that the factories had to bear additional interest on the working capital involved in such unreleased stocks. The usual period of six months for the release of stock on the basis of which the return on capital at the static figure of Rs. 10.50 a quintal had actually become unrealistic. The result, therefore, was that the factories could not expect to get the said return on the capital employed. Since the question was an important one we called upon the Government to disclose the correspondence, if any, which it had in this connection with the Tariff Commission. Thereupon the Government produced the relevant correspondence. It appears from that correspondence that on March 26, 1970 the Indian Sugar Mills Association had made a representation for addition in the return of Rs. 10.50 on the ground that the 1969-70 year's production had come to 42 lac tonnes, an all time record and in addition thereto there was already at hand a large stock lying undisposed of resulting in the component of working capital being very much higher than that calculated by the Tariff Commission while fixing Rs. 10.60 as the return. On June 5, 1970, the Government referred this representation to the Commission. By its letter dated July 29, 1970, the Commission recommended that the question of accumulation of stocks as represented by the association required sympathetic consideration and suggested an increase in lieu of interest at 9% on the additional working capital represented by the accumulated stock.

In considering this claim however two facts need to be borne in mind. The production in 1970-71 was not as high as that in 1969-70 and in fact had considerably declined. So far as the ,Haryana factories were concerned, none of them had purchased cane at a price higher than the minimum fixed by Government, although the assumption behind the policy of partial control leaving 40% of the stock for free market and the unconventional method ,of granting a fixed return of Rs. 10.50 was that these two factors would enable the manufacturer to pay a higher cane price. The figures supplied to us by Government called out from the returns filed by the factories would also suggest that the claim for Rs. 2.29 per quintal was not warranted. The total production by the Haryana factories during 1970-71 was of the tune of 82,756 tonnes. Despatches upto May 24, 1971, when sugar was decontrolled, of free sugar were 7,065 tonnes at Rs. 139.70 per quintal. Despatches of levy sugar, upto the date of the interim order of stay dated April 8, 1971 were 2,380 tonnes and from April 8, 1971 to May 24, 1971, 4,194 tonnes at Rs. 158.02 per quintal. The balance of stock lying with the factories as on June 1, 1971 was 6911.7 tonnes. Despatches during the decontrol period, i.e., from June 1, 1971 to December 31, 1971 were 63,023 tonnes at the rate of Rs. 151.39 per quintal, leaving a balance in hand of 6094 tonnes. It may be mentioned that on June 30, 1972 the stock lying on hand came to 427 tonnes. only. Since this was the position, the claim for additional interest at Rs. 2.29 per quintal does not appear to be sustainable, nor also the claim for deterioration of stock owing to the stock lying stored up beyond the normal period, the loss by way of deterioration during such period being the normal incidence of the trade which the manufacturer must anticipate. Regarding the claim of 63 paise owing to increase in freightage (i.e., of 54 paise by road and 9 paise by rail), the Tariff Commission refused to concede that claim. Even before us there are no adequate materials to come to any precise conclusion as to the ,extra burden which the appellants had actually to bear, though increase in freightage during the year is admitted.

Have the Haryana factories then not received in fact during 1970-71 the reasonable return as envisaged by sub-s. 3C? The actual figures of the year for duration and recovery were not in dispute. They were 162 days and 8.69% respectively. On that basis; the cost, according to the cost-schedule worked out for Haryana by the Commission, would come to Rs. 126.61, including Rs.10.50. To that amout may be added the following, even assuming that they are all allowable : (1) increase in wages, Rs.1.05, (2) increase in depreciation, 56 paise, (3) deterioration in quality, 19 paise, (4) insurance and godown costs, 7 paise, (5) increase in cost of consumable stores, 19 paise, (6) increase in cost of gunny bags, Re.1.20, (7) increase in freightage by road and rail, 63 paise, (8) interest on longer storage, Rs. 2.84 and (9) selling expenses, 45 paise (total Rs. 7.18=Rs. 133.79). But for the reasons given above, items 3, 7 and 8 (total Rs. 3.66) must go and therefore the figure would come to Rs. 130.13. As against this, the realisations for levy and free sugar upto the date of decontrol, i.e., May 24, 1971 were as follows : 63,741 quintals at the average rate of Rs. 124.63 and 70,650 quintals at the average rate of Rs. 136.49. The average price thus realised comes to Rs. 130.77. There is no doubt that if the sales after May 24, 1971 which were all in free market were to be taken into account, the average realised would come to much more than Rs. 130.77. There is, therefore, no doubt that taking the picture as a whole the Haryana factories got in any event a reasonable return on the capital employed.

On the construction of sub-section 3C adopted by us and such of the materials produced before us, we are of the opinion that no case for quashing the impugned order has been made out, nor has the price fixed by Government been shown to be inconsistent with the sub-section.

In the result the appeals fail and are dismissed. In view of the somewhat complicated questions as to the meaning and interpretation of sec. 3(3C) of the Act, we direct that the parties will bear their own costs althroughout. Liberty to the parties to file applications for directions in respect of the Bank Guarantees furnished by them in pursuance of stay orders passed by this Court.

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V.P.S.                          Appeals dismissed.
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