

Sukhnandan Saran Dinesh Kumar & Another ... vs Union Of India & Another Etc. Etc on 3 March, 1982

Equivalent citations: 1982 AIR 902, 1982 SCR (3) 371, AIR 1982 SUPREME COURT 902, 1982 UJ (SC) 503, (1982) 3 SCR 371 (SC), (1982) SCCRIR 1, (1982) 2 SCJ 13, 1982 (2) SCC 150

Author: D.A. Desai

Bench: D.A. Desai, A. Varadarajan

PETITIONER:

SUKHNANDAN SARAN DINESH KUMAR & ANOTHER ETC. ETC.

Vs.

RESPONDENT:

UNION OF INDIA & ANOTHER ETC. ETC.

DATE OF JUDGMENT 03/03/1982

BENCH:

DESAI, D.A.

BENCH:

DESAI, D.A.

VARADARAJAN, A. (J)

CITATION:

1982 AIR 902

1982 SCR (3) 371

1982 SCC (2) 150

1982 SCALE (1) 165

ACT:

Sugar Cane (Control) Order 1966, Clauses 3, 3A, 4 and 4A & U.P. State Government Notification dated September 3, 1980.

Sugar Cane brought in bundles-Binding material-Grant of rebate-Whether valid and reasonable.

HEADNOTE:

The raw material for manufacturing sugar or Khandsari sugar is sugarcane. When the vacuum pan process is employed the end product is called sugar and when the open pan process is employed the end product is called Khandsari sugar. In order to extend protection to the farmers who had undertaken raising of sugarcane crop, the Central Government issued the Sugarcane (Control) Order 1966. Clause 3 of this

Order conferred power on the Central Government to fix minimum price of sugarcane to be paid by producers of sugar for sugarcane purchased by them. Clause 4 conferred similar power to fix the minimum price to be paid by the producers of khandsari sugar for the sugarcane purchased. Clause 3A which was introduced on September 24, 1976 conferred power on the Central Government and various other authorities to allow a suitable rebate in regard to the weight of the binding material not exceeding 0.625 Kg. per quintal of sugarcane, when sugarcane was purchased by the producer of the sugar. Later, Clause 4A was introduced on March 20, 1978 to provide for the rebate that can be deducted from the price paid for sugarcane by producers of khandsari sugar.

The State Government issued a notification on September 3, 1980 to provide that where sugarcane is brought in bundles and is weighed as such, a rebate in regard to the binding material at 0.625 Kg. per quintal should be allowed. As there was a printing error in mentioning the figure '0.650 kg.' a corrigendum was issued to correct it, to '0.625 kg' per quintal in the notification.

The petitioners in the writ petitions who were manufacturing khandsari sugar by the open pan process assailed the decision of the State Government allowing rebate. They contended that: (1) the power to prescribe the rate of rebate under the third proviso to clause 4 is conditional upon the fixing of the minimum price of sugarcane and as the pre-condition for exercise of that power was not satisfied, the authorities cannot exercise power to prescribe the rate of

372

rebate, (2) if the purchaser and seller of sugarcane are free agents to negotiate the price no useful purpose would be served by prescribing the rate of rebate statutorily. If higher rebate is to be allowed, the producer of khandsari sugar and the grower of sugarcane would work out the price accordingly and if less rebate is allowed, it will have a direct impact on the negotiated price, (3) assuming that the power to prescribe the rate of rebate under clause 4A read with the third proviso could also be exercised where the price of sugarcane was left to be negotiated between the growers of sugarcane and the producers of khandsari sugar, the quantum of rebate determined must have a reasonable relation to the reality of market situation as well as to prevalent trade practice, (4) assuming that the Central Government was influenced by the report made by the Director, National Sugar Institute the report suggests that the average works out at 0.741 kg per quintal, and consequently there was no justification for further reducing it to 0.625 kg, (5) the notification places a restriction on the freedom of trade guaranteed under Article 19(1) (g) and as it is neither reasonable nor imposed in public interest, it is violative of freedom of trade and therefore void, and (6) in order that a restriction may be reasonable it must

have a reasonable relation to the object which the statute seeks to achieve and must not be in excess of that object.

Dismissing the writ petitions.

^

HELD: The State Government notification dated September 3, 1980 directing that where sugarcane is brought in bundles and is weighed as such a rebate in regard to the binding material at 0.625 kg per quintal be allowed, is valid and legal. The rebate was statutorily prescribed to ensure that sugarcane growers were not at the mercy of the producers of sugar and khandsari sugar. The statutory rebate serves two-fold purpose: (i) it ensures price of sugarcane avoiding impermissible deductions and (ii) it circumvents fraud by making such deductions as would render illusory even the negotiated price, if not fixed price. The restriction is undoubtedly reasonable and is imposed in the interest of the general public and the guarantee of freedom of trade is not violated.

[376 E; 392 H; 393 A-C]

1. (i) Though clause 3A was inserted in the Control Order in 1976 conferring power on the Central Government or with the approval of the Central Government, on the State Government to allow rebate at 0.625 kg. per quintal of sugarcane purchased by manufacturers of sugar, such rebate was being prescribed by the Central Government since 1968. [379 G]

(ii) Clause 4 confers power on the Central Government or a State Government with the concurrence of the Central Government to fix the minimum price or the price of sugarcane to be paid by producers of khandsari sugar for sugarcane purchased by them. Third proviso to clause 4 provides that the Central Government or with the approval of the Central Government the State Government to allow a suitable rebate in the price so fixed. If the provision were to end with clause 4, the question may arise whether the power to determine rate of rebate can be exercised de hors the power to fix minimum price or price of sugarcane or can be unilaterally exercised. But the language of the third proviso "...as it may specify, allow a suitable rebate of the price so fixed", indicates that the rebate is co-related to the price fixed. [381 C-F]

373

(iii) The rebate contemplated by the third proviso to clause 4 is not necessarily confined to rate of rebate for binding material only but permissible rate of rebate from the price or minimum price fixed under the substantive provision of clause 4 can be prescribed. [381 H; 382 A]

(iv) Clause 4A stands on an independent footing and it is independent of clause 4. Clause 4A is neither inter-dependent nor interrelated to clause 4. Clause 4A visualises a situation in which either the minimum price of sugarcane is fixed under clause 4 or where no such price is fixed, the price agreed to between the sugarcane grower and the

producer who purchased sugarcane and even in this latter situation the power to prescribe rate of rebate only in respect of binding material was conferred on the authorities set out in the third proviso to clause 4A. Therefore, fixing of the minimum price may be a pre-condition to the exercise of power under the third proviso of clause 4, as far as clause 4A is concerned, even where the price to be paid by the producer to the sugarcane grower is the one negotiated between the two, the producer or his agent will have to allow that much rebate and no more for binding material if notified under the third proviso. This literal construction accords with the intendment of the provision. [382 B-E; 383 G]

2. (i) Sugarcane is a perishable commodity. The grower of the sugarcane is at the mercy of producers of sugar or khandsari sugar. It would be uneconomic for him to transport sugarcane to a long distance. The product, being perishable and transport over a distance being uneconomic, the grower of sugarcane has limited choice in selecting the producer to whom it could be sold. Between the producer of khandsari and the grower of sugarcane, the first one is primarily in a position to dominate and dictate and they do not operate on the level of equality. The grower of sugarcane in relation to the producer of the khandsari sugar would therefore be weaker and requires to be protected. If the protection of fixing of minimum price is not resorted to because the authorities have information that the grower of sugarcane would be able to obtain a reasonably fair price for his labour, the only thing which is required to be protected against is iniquitous. unauthorised and impermissible deductions. In the States of Uttar Pradesh and Bihar the weight of the binding material when sugarcane is brought in bundles to the producer has been a fruitful source for the producers of khandsari sugar to make deductions from the weight of sugarcane delivered to them in an exorbitant quantity so as to deny in real money worth the negotiated price. [382 H; 388 A-D]

(ii) While retaining the power to fix minimum price or price to be paid and also in a given situation leaving it to the purchaser of sugarcane to negotiate the price in order to eschew any exploitation of the weaker section between the two, the power to prescribe the rate of rebate was acquired and it can be rightly enforced. There is therefore no merit in the submission that unless the power to fix the price or minimum price is exercised there is no power to prescribe the rate of rebate. [383 F-G]

3. The rate of rebate has been determined by the law of averages after collection information from all over the country, and the present rate of rebate

374

is in vogue for over a quarter of a century. It is therefore difficult to accept the submission that the fixation of rate of rebate for binding material at 0.625 kg. for the whole

country is either arbitrary or unreal or unrelated to trade and practice.

[376 G-H]

4. (i) The differential between what is prescribed and what is calculated as average by the study of the National Sugar Institute is not so wide as to render the prescribed rate arbitrary or unrealistic. The differentials being within a narrow range, the one which is in vogue for over a quarter of a century cannot be rejected as arbitrary or unrelated to trade and practice. Nor is the Court competent to work out the exact permissible rebate with mathematical accuracy.

[387 D-E]

(ii) The rate of rebate set out in the impugned notification bears resemblance to the sample testing of actual weight of binding material used in binding sugarcane when brought in bundles to the khandsari factory. [388 G]

(iii) This does not however imply that no case has been made for upward revision of the rebate. The Central Government may realistically examine the same before the next crushing season commences. [388 G]

5. (i) It would be open to the producer of khandsari sugar to buy sugarcane from the grower who may be asked to bring sugarcane not bound in bundles. The rebate for binding material is to be allowed only when sugarcane is brought to the khandsari sugar producing unit bound in bundles. It is always open to the purchaser of sugarcane to insist upon the grower bringing the sugarcane not bound in bundles and he is free to negotiate the price of sugarcane is not fixed and the impugned notification will not even remotely impinge upon his freedom to carry on his trade. The restriction complained of therefore does not directly and proximately interfere with the exercise of freedom of trade and Article 19(1) (g) is not attracted. [389 E-G]

(ii) Producers of sugar and khandsari sugar constitute powerful trade lobby, and this can be taken judicial notice. Sugar being an essential commodity occasionally kept in short supply and being a commodity needed for consumption by almost the entire population, the powerful industry magnates are in a position to dominate both the growers of sugarcane as also the consumers of the essential commodity. Number of regulations have been enacted to regulate this powerful combination of manufacturers of sugar and khandsari sugar all over the country for the ultimate benefit of consumers, the farmers-the growers of sugarcane. The marginal farmers, are unable to stand up against the organised industry and need protection for selling at fair price their meagre agricultural produce. [391 D-G]

(iii) Sugarcane growers who are farmers cannot negotiate on the footing of equality with the producers of sugar and khandsari sugar. The State action for the protection of the weaker sections is not only justified but absolutely necessary unless the restriction imposed is

excessive. If price or minimum price of sugarcane is fixed, the producers of sugar would try to circumvent the price or minimum price by unrealistic and impermissible deductions. The rebate for weight of binding material seems to be a source for indulging in this nefarious, if not wholly fraudulent conduct.

375

6. To strike the balance between the conflicting interests not only the State acquired power to fix minimum price of sugar and khandsari sugar but that this wholesome effort may not work to the disadvantage of the sugarcane growers another weaker section of the society, the power to prescribe rate of rebate was acquired. And the power to fix price or minimum price comprehends the power to so regulate supply as to ensure the price so fixed and to ensure that in the name of unauthorised and unwarranted deduction the price fixed or negotiated is not rendered illusory. [393 G-H; 394 A]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition Nos. 6443-44/80, 8829-30, 9123-24, 370-87, 777-796, 658-62, 732-63, 824-31, 847-62, 1080-1103, 1131-52, 8916, 9071-74, 9130-32, 9176-79, 8965, 8971-72, 9347-48, 9352-67 of 1981.

(Under Article 32 of the Constitution of India) AND Writ Petitions Nos. 14-19/82, 333-25, 458-96, 1307-17, 1410-13, 1595, 8268-72 of 1981 and 152 of 1982.

(Under article 32 of the Constitution of India) C.M. Lodha. in W. P. No. 6443-44/80, Shanti Bhushan, in WP. Nos. 732-63, 3423-25/81-S.N. Kackar, in W.P. 777-96 & 1131-52 of 81; R.K. Jain, S. Mitter, K.K. Mohan, N.S. Das Bahl, Rameshwar Dial and Madan Gopal Gupta for the Petitioners.

G.N. Dikshit and Mrs. Shobha Dikshit for Respondents. Girish Chandra and Miss A. Subhashini for Union of India in W.P. Nos. 6443-44/80.

The Judgment of the Court was delivered by:

DESAI, J. Even an innocuous marginally regulatory measure affecting the sugar trade at fringes is sufficient for this powerful industry to invade the courts with petitions galore almost proclaiming that there should be hands off policy in respect of this trade. The flimsy albeit untenable grievance made in this group of petitions would underscore the truth of what is just stated.

In exercise of the power conferred by clause (4) third proviso of the Sugarcane (Control) Order, 1966, (Control Order' for short), the 2nd respondent-State of Uttar Pradesh, with the permission of the 1st respondent Union of India, issued

Notification dated September 3, 1980, which is impugned in these petitions. The impugned Notification reads as under:

Government Gazette, U.P. Extraordinary Legislative Supplement Part 4, Section (b) (Kha) ...Order Lucknow, Wednesday, 3rd September, 1980. Notification P.As.-306 In exercise of the powers conferred by clause 4 proviso 3 of the Sugarcane Control Order, 1966, the Governor, with the permission of the Central Government, allows in Uttar Pradesh in respect of Khandsari units, producing Gur, rab or Khandsari sugar, where sugarcane is brought in bundles and is weighed as such, a rebate in regard to the binding material at 0.650 kilograms per quintal.

By Order, R. Basudev, Secretary"

It was stated that there was a printing error in mentioning the figure '0.650 kg.' and a corrigendum has been issued to correct it to '0.625 kg.' per quintal in the Notification.

The allegations in all the petitions are identical and, therefore, we would state a few representative facts from the writ petition filed by M/s. Sukhnandan Saran Dinesh Kumar and Another. The petitioners are producers of sugar by open pan process, the product being described as Khandsari sugar. This term is to be understood in contra-distinction to the marketable commodity called 'sugar' which is produced by vacuum pan process. The raw material for manu-

facturing sugar or Khandsari sugar is sugarcane. The petitioners have set up a factory for manufacturing khandsari sugar by open pan process. The petitioners buy sugarcane from the sugarcane growers. In order to extend protection to the farmers who have undertaken raising of sugarcane crop, the Central Government issued the Control Order in exercise of the power conferred by section 3 of the Essential Commodities Act, 1955. By clause 3 of this order, power was conferred on the Central Government to fix minimum price of sugarcane to be paid by producers of sugar for sugarcane purchased by them. Clause 4 confers similar power to fix the minimum price to be paid by the producers of khandsari sugar for sugarcane purchased by them. Other clauses of the Order for the present purpose are not relevant. Clause 3A was introduced by GSR 815 (E)/ESS. COM./Sugarcane dated September 24, 1976, which, inter alia, conferred power on the Central Government and various other authorities mentioned therein to allow a suitable rebate in regard to the weight of the binding material not exceeding 0.625 kg, per quintal of sugarcane, when sugarcane was purchased by the producer of sugar. Subsequently, by Notification GSR 197 (E)/Ess. Com./Sugarcane dated March 20, 1978, Clause 4A with the marginal note "Robate that can be deducted from the price paid for sugarcane by producers of Khandsari sugar" was introduced. Clauses 4 and 4 A are material for the present discussion and they may be extracted:

"4. Minimum price of sugarcane payable by producers of Khandsari sugar:-

The Central Government or a State Government, with the concurrence of the Central Government, may, by notification in the Official Gazette, from time to time, fix the minimum price or the price of sugarcane to be paid by producers of khandsari sugar or their agents for the sugarcane purchased by them:

x x x Provided also that the Central Government or, with the approval of the Central Government, the State Government, may in such circumstances and subject to such con-

ditions as it may specify allow a suitable rebate in the price so fixed."

*"4A. Rebate that can be deducted from the price paid for sugarcane by producers of khandsari sugar:

A producer of khandsari sugar or his agent shall pay, for the sugarcane purchased by him, to the sugarcane grower or the sugarcane growers' co-operative society, either the minimum price of sugarcane fixed under clause 4, or the price agreed to between the producer or his agent and the sugarcane grower or the sugarcane growers' co. operative society, as the case may be (hereinafter referred to as the agreed price:) Provided that:

x	x	x
x	x	x

(iii) Where the sugarcane is brought bound in bundles and weighed as such, the Central Government, or, with the approval of the Central Government, the State Government or the Director of Agriculture or the Cane Commissioner or the District Magistrate within their respective jurisdiction, may allow a suitable rebate in regard to the weight of the binding material not exceeding 0.625 Kilograms per quintal of sugarcane; and, x x x Clause 4 conferred power on the Central Government or a State Government with the concurrence of the Central Government to fix the minimum price or the price of sugarcane to be paid by producers of khandsari sugar or their agents for the sugarcane purchased by them. The second and third proviso to clause 4 were simultaneously introduced with clause 4A. By the Third proviso to clause 4, power was conferred on the Central Government or with the approval of the Central Government on the State Government to allow a suitable rebate in the price fixed in exercise of the power conferred by clause 4. The purpose underlying the proviso is manifest. If the minimum price or price of sugarcane to be paid by producers of khandsari sugar is fixed, it is incumbent upon the producers of khandsari sugar to pay that price and nothing less than that price on the pain of criminal prosecution. The authorities clearly envisaged a situation where sugarcane may be brought in bundles to the unit manufacturing khandsari sugar and if the sugarcane is weighed with the binding material used, the minimum price or price fixed by the Government

to be paid per quintal of sugarcane would ipso facto include the weight of the binding material and if the power to grant rebate is not conferred the producer of khandsari sugar will be under an obligation to pay the same price even if the part of the payment was for something other than sugarcane, namely, binding material. The *raison d'être* behind conferring this power is thus clearly discernible.

Clause 4A made it obligatory to pay the minimum price of sugarcane if so fixed under clause 4 or in the absence of price fixation, the negotiated price. Proviso (iii) to clause 4A confers power to allow rebate not exceeding 0.625 kg. per quintal of sugarcane where sugarcane is brought in bundles and is weighed as such, i.e. with the binding material. Armed with this power, the 2nd respondent after obtaining approval of the Central Government, as per letter dated September 6, 1979, issued the impugned notification directing that where sugarcane is brought in bundles and is weighed as such a rebate in regard to the binding material at 0.625 kg. per quintal be allowed.

Before advertng to the contentions raised in this group of petitions it may be made distinctly clear that though clause 3A was inserted in the Control Order in 1976 conferring similar power on the Central Government or with the approval of the Central Government, on the State Government to allow rebate at 0.625 kg. per quintal of sugarcane purchased by manufacturers of sugar, such rebate was being prescribed by the Central Government since 1968. The Gazettes of India setting out the notifications for the years 1968, 1971, 1972 and 1975 were shown to us. The notifications were issued in exercise of the power conferred by clause 3 of the Sugarcane Control Order, 1966. By the notifications hereinabove referred to minimum price of sugarcane per quintal payable by each sugar mill enumerated in the Schedule to the notification was fixed.

While fixing this minimum price the Central Government authorised itself as also conferred power on the State Governments or the Commissioner or Director of Agriculture within their jurisdiction to allow a suitable rebate in regard to the weight of binding material not exceeding 0.625 kg. per quintal of sugarcane. It thus clearly transpires that the power to fix the minimum price of sugarcane comprehended the power to fix rebate to be allowed for binding material where sugarcane is brought to the factory or the producing centre bound in bundles. However, to avoid any quibbling about the power to fix such rates of rebate, clause 3A was added in 1976 and an identical clause 4A was added in 1978 acquiring power to prescribe rebate to be allowed for binding material where sugarcane is brought to the khandsari sugar producing units bound in bundles and weighed as such. This would at least show that since 1968 rebate at 0.625 per quintal of sugarcane purchased by producers of sugar is being allowed. Sugarcane is a raw material both for sugar and khandsari sugar, the distinction between them being that when vacuum pan process is employed the end product is called sugar and when open pan process is employed the end product is called khandsari sugar. In case of either of them, the grower of sugarcane has hardly anything to do with the end product. After the grower sells his sugarcane, as far as he is concerned, it is immaterial whether the producer produces sugar or khandsari sugar or rab or jaggery or shakkar. Therefore, clause 4A was introduced to avoid discrimination between producers of sugar and khandsari sugar in the matter of rebate to be allowed when the grower of sugarcane brings the same bound in bundles to be delivered to the producer. The producers of sugar have without a murmur accepted this position but once the producers of khandsari sugar are brought within the purview of an identical provision, they have

filed the present petitions.

Mr. C.M. Lodha who led on behalf of the petitioners contended that the power to prescribe rate of rebate under third proviso to clause 4 is conditional upon the fixing of minimum price or price of sugarcane, and as the pre- condition to exercise of power is not satisfied, the authorities cannot exercise power to prescribe rate of rebate. The submission is that where minimum price of sugarcane is fixed by the Government, in order to ensure that that price is paid for sugarcane and simultaneously to avoid any unauthorised deduction, the Central Government or the State Government may prescribe the rate of rebate to be allowed beyond which no deduction under the camouflage of rebate for binding material can be resorted to by the purchaser; but if the power to fix minimum price or price of sugarcane is not exercised, there does not arise a situation in which the power to prescribe rebate to be allowed for binding material can be exercised. It was urged that the power to fix price or minimum price of sugarcane and to prescribe rate of rebate are not independent but they are inter-dependent and one cannot be exercised without exercising the other.

Clause 4 confers power on the Central Government or a State Government with the concurrence of the Central Government to fix the minimum price or the price of sugarcane to be paid by producers of khandsari sugar for sugarcane purchased by them. Third proviso to clause 4 provides that the Central Government or with the approval of the Central Government, the State Government may in such circumstances and subject to such conditions as it may specify, allow a suitable rebate in the price so fixed. If the provision were to end with clause 4, a serious contention would arise whether the power to determine rate of rebate can be exercised de horse the power to fix minimum price or price of sugarcane or can be unilaterally exercised. Undoubtedly, if the power was exercised under clause 4 probably the pre-condition to exercise of power of prescribing suitable rebate viz. fixing of minimum price or price of sugarcane if not satisfied, the power to prescribe rate of rebate could not have been exercised because the latter power for its exercise is dependent upon the power to fix price or minimum price. Both the powers are interrelated as would be evident from the language of third proviso:

"...as it may specify, allow a suitable rebate in the price so fixed." The rebate is thus co-related to price fixed. Therefore prima facie it appears that the power to fix rate of rebate under the third proviso to clause 4 cannot be exercised without exercising the power to fix price or minimum price. It being a conditional power, the satisfaction of condition giving rise to the occasion to exercise of power is a must. Therefore, before the rate of rebate is prescribed the price or the minimum price of sugarcane as provided in the substantive part of clause 4 will have to be fixed. From the price so fixed a rebate has to be allowed and, therefore, the power was conferred by the third proviso to prescribe the rate of rebate. The rebate contemplated by the third proviso to clause 4 is not necessarily confined to rate of rebate for binding material only but per-

missible rate of rebate from the price or minimum price fixed under the substantive provision of clause 4 can be prescribed.

Clause 4A stands on an independent footing and it is independent of clause 4. Clause 4A is neither inter- dependent nor interrelated to clause 4. Clause 4A provides that the producer of khandsari sugar or his agent shall pay for the sugarcane purchased by him to the sugarcane grower or the sugarcane growers' cooperative society either the minimum price of sugarcane fixed under clause 4 or the price agreed to between the producer or his agent and the sugarcane grower or the sugarcane growers' co-operative society as the case may be. Clause 4A thus visualises a situation in which either the minimum price of sugarcane is fixed under clause 4 or where no such price is fixed, the price agreed to between the sugarcane grower and the producer who purchased sugarcane and even in this latter situation the power to prescribe rate of rebate only in respect of binding material was conferred on the Central Government or the authorities set out in the third proviso to clause 4A. Therefore, fixing of the minimum price may be a pre-condition to the exercise of power under the third proviso of clause 4, as far as clause 4A is concerned, even where the price to be paid by the producer to the sugarcane grower is the one negotiated between the two, the producer or his agent will have to allow that much rebate and no more for binding material if notified in exercise of the power conferred by the third proviso. This literal construction accords with the intendment of the provision as would be presently pointed out.

Mr. Lodha urged that if the purchaser and seller of sugarcane are free agents to negotiate the price, what useful purpose would be served by prescribing the rate of rebate statutorily ? Says Mr. Lodha, that if higher rebate is to be allowed, the producer of khandsari sugar and the grower of sugarcane would work out the price accordingly and if less rebate is allowed, it will have a direct impact on the negotiated price. This submission proceeds on the unwarranted assumption that a producer of khandsari sugar and the grower of sugarcane are capable of negotiating the price as free agents and stand on a footing of equality. Sugarcane is a perishable commodity. The grower of the sugarcane is at the mercy of producers of sugar or khandsari sugar. It would be uneconomic for him to transport sugarcane to a long distance. By the very nature of the product, it being perishable and transport over a distance being uneconomic, the grower of sugarcane has limited choice in selecting the producer to whom it could be sold. Between the producer of khandsari and the grower of sugarcane, the first one is primarily in a position to dominate and dictate and they do not operate on the level of equality. Unquestionably, therefore, the grower of sugarcane in relation to the producer of the khandsari sugar would be weaker and it is he who requires to be protected. Now, if the protection of fixing of minimum price is not resorted to because the authorities under the Control Order may have information before them that looking to the supply and demand and the demand and the market economy, the grower of sugarcane would be able to obtain a reasonably fair price for his labour, the only thing which is required to be protected against is iniquitous, unauthorised and impermissible deductions. It appears that in the State of Uttar Pradesh and Bihar the weight of the binding material when sugarcane is brought in bundles to the producer has been a fruitful source for the producers of

khandsari sugar to make deductions from the weight of sugarcane delivered to them in such an exorbitant quantity as to deny in real money worth the negotiated price. This can be demonstrably established by the claim made in these petitions that the weight of binding material is 2.5 kg. per quintal of sugarcane while the authorities have prescribed only 0.625 kg. per quintal of sugarcane and the national average as worked out by National Sugar Institute, Kanpur is 0.741 kg. per quintal of sugarcane. If the price of sugarcane is fixed per quintal and the deduction is made as contended herein, it does not require imagination or mathematician's intellect to work out the invisible loss inflicted by the subtle method on the growers of sugarcane. Therefore, while retaining the power to fix minimum price or price to be paid and also in a given situation leaving it to the purchaser of sugarcane and grower of sugarcane to negotiate the price in order to eschew any exploitation of the weaker section between the two, the power to prescribe the rate of rebate was acquired and can be rightly enforced. Therefore, viewed from either angle, there is no merit in the submission that unless the power to fix the price or minimum price is exercised there is no power to prescribe the rate of rebate. Language of clause 4A on a literal or grammatical construction negatives the submission and it must as well be rejected looking to the intendment underlying this provision.

Mr. Shanti Bhushan, learned counsel appearing for the petitioners in Writ Petitions No. 732 to 763 urged that assuming that power to prescribe rate of rebate under clause 4A read with the third proviso could also be exercised where price of sugarcane may be left to be negotiated between the growers of sugarcane and producers of khandsari sugar, yet the quantum as determined must at least have reasonable relation to the reality of market situation as well as prevalent trade practice. He urged that viewed from this angle fixation of rate of rebate at 0.625 kg. per quintal of sugarcane is unjust and unfair and therefore the Court should strike down the impugned notification on the ground that the determination is arbitrary and utterly unrelated to trade and practice. Simultaneously he contended that assuming that national average of weight of binding material works out at 0.741 kg. per quintal as submitted by the Respondents on the strength of the report of National Sugar Institute, Kanpur, there was absolutely no justification for reducing the same to 0.625 kg. per quintal and therefore prescribed rate of rebate apart from being arbitrary is unrelated to trade and practice and deserves to be quashed. In this connection, he referred to Paragraph 6 of the counter-affidavit filed by Shri H.A.M.L. Vaz, Deputy Secretary, Ministry of Agriculture, Department of Food in which it is stated as under:

"The limit of 625 grams per quintal was adopted, as it was allowed by the States of U.P. and Bihar before the Central Government took over the control over the price of sugarcane, and has continued since then. Representations were received from the Associations of the vacuum-pan sugar mills etc. against that limit. A survey was carried out by the National Sugar Institute, Kanpur, and the average weight of the binding material worked out to 0.741 kg., per quintal for the winter season of the

selected factories spread over the whole country. Subsequently, on receipt of a representation from the Madras State Federation of Co- operative Sugar Factories, views of the State Governments in the matter were also called for, with the specific request that they might also ascertain the views of the cane growers. The major sugar producing State Governments of U.P., Punjab, Rajasthan, Maharashtra, Karnataka, Andhra Pradesh, Pondicherry, West Bengal, Orissa, Madhya Pradesh, Kerala and Gujarat, recommended that the limit already prescribed was adequate and that there was no need to revise it. The Bihar Government had already indicated the same view. Hence fixation of that limit cannot be said to be unreal and arbitrary or contrary to actualities of trade and practice."

Petitioners countered it by the affidavit in rejoinder of Shri Prem Parkash Aggarwal; the relevant portion of para 4 reads as under:

"With reference to Para 6 of the counter-affidavit I say that to the best of my information no survey was carried out at any time after 1976. It is to the best of my information that National Sugar Institute, Kanpur, conducted some kind of survey in 1964 or earlier."

This half-hearted lack of knowledge would not be sufficient to reject what Mr. Vaz stated in his counter-affidavit. However, to put this factual averment beyond the pale of controversy Mr. Girish Chandra, learned advocate who appeared for the Union Government produced a file of the Department of Food, Sugar Policy Desk, in which claim for upward revision of allowance for binding material presently allowed under Sugar (Control) Order, 1966 in the light of the suggestions received from Indian Sugar Mills Association as per its letter dated July 14, 1977 has been meticulously examined. It appears that Indian Sugar Mills Association approached the Central Government requesting it for upward revision of the rebate for binding material till then granted under the Control Order. Indian Sugar Mills Association appears to be the spokesman of the sugar industry. Probably a grievance was voiced that while producers of sugar are under a statutory obligation to grant the prescribed rate of rebate, the producers of khandsari sugar are under no such obligation even though they purchase sugarcane from the the same market. Accordingly while examining the question whether any upward revision in the rate of rebate should be allowed to the producers of sugar who purchase sugarcane, it was decided to simultaneously introduce an identical provision in respect of purchase of sugarcane by producers of khandsari sugar. That is the genesis of the introduction of clause 4A in the Control Order. The file meticulously examines the suggestion for upward revision of the rate of rebate. It clearly transpires from the file that a circular letter was sent to all the governments of sugar producing states requesting them to intimate their view on the desirability or otherwise of any upward revision in the existing quantum of rebate of 0.625 kg. per quintal in respect of the weight of the binding material where sugarcane is brought bound in bundles and weighed as such. It may be briefly mentioned that Punjab, Gujarat, Karnataka and U.P., did not consider it necessary to grant any upward revision. On the other hand, Tamilnadu, Kerala, West Bengal, Pondicherry, Haryana, Rajasthan and Orissa were of the opinion that there is some justification for an upward revision not exceeding 1 kg. per quintal. The State of Bihar took a neutral stand stating that in Bihar, sugarcane is not supplied bound in bundles and therefore the question of

giving any rebate in respect of binding material does not arise. After ascertaining the views of the different State Governments, the department was of the view that since the views of the State Governments are sharply divided, a request may be made to Director, National Sugar Institute, Kanpur to carry out an independent study in regard to the quantum of rebate that should be given for binding material, to enable the Government to take a final decision, on the request of the industry for upward revision of the existing rebate of 0.625 kg per quintal. This is the genesis of the report of the Director, National Sugar Institute referred to in Para 6 of the counter-affidavit. The summary of the report of the Director, National Sugar Institute, Kanpur was examined and it was observed that the percentage of the binding materials varies from State to State and ranges between 0.64 to 1.5% except in Orissa where it is found to be 3.00%. When the matter was still under consideration of the Department, the present writ petitions were filed. It was observed that the present rate of rebate is in force for the last over 20 years, so far as the vacuum-pan sugar manufacturers are concerned and the same can be applied to the khandsari sugar manufacturers also. Probably further examination of the request for upward revision came to be stalled in view of the fact that the present writ petitions were filed.

In the light of the fact situation hereinabove set-out, it is difficult to accept the submission that the fixation of rate of rebate for binding material at 0.625 kg. for the whole country is either arbitrary or unreal or unrelated to trade and practice. The rate of rebate seems to have been determined by the law of averages after collecting information from all over the country. Coupled with this is the fact that the present rate of rebate is in vogue for over a quarter of a century. It in itself is sufficient to negative the contention that the rate of rebate is fixed arbitrarily or unrelated to trade and practice.

The next submission is that assuming that the Central Government was influenced by the report made by the Director of the National Sugar Institute, Kanpur, the report suggests that the average works out at 0.741 kg, per quintal, being approximately the mean between 0.64 and 1.5%. Therefore, it was vehemently urged that there was no justification for further reducing it to 0.625 kg. When the determination has to be made on law of averages and applicable to the whole country, the final figure cannot be mathematically determined. If the existing rate of rebate, determined on the national average is marginally higher or lower than the average worked out by a later study team, it cannot be said that the existing prescription is arbitrary or unrelated to trade or practice. No doubt, if the range is wide, and the gap is unexplained, realistic redetermination may be directed. According to the average worked out by the Director of the National Sugar Institute, all India average rate of rebate would work out at 0.741 kg. per quintal while the Government has been fixing for over a quarter of a century the rate of rebate at 0.625 kg. per quintal. Thus the differential between what is prescribed and what is calculated by the study is not so wide as to render the prescribed rate arbitrary or unrealistic. The differentials being within a narrow range, the one which is in vogue for over a quarter of a century cannot be rejected as arbitrary or unrelated to trade and practice. Nor is the Court competent to work out the exact permissible rebate with mathematical accuracy.

A reference at this stage to a piece of evidence furnished by the petitioners would suffice to repel the contention of the petitioners that the average weight of binding material is 2.5 kg. per quintal and, therefore, the prescribed rate is not merely marginally low but wholly unrealistic. Annexure I to the

rejoinder affidavit filed by Shri Prem Prakash Aggarwal, Secretary of Gur Khandsari Utpadak Sangh, Roorkee, dated December 24, 1981, purports to be a report of the Assistant Sugarcane Commissioner on his visit to M/s Anand Prakash Atulkumar, a Khandsari sugar producing unit on January 25, 1978. He was accompanied by Shri Shanker Shukla, Khandsari Officer, Sarvashri S.D. Verma, R.C. Kureel, Deoband and Navin Chandra, Khandsari Inspectors. In order to ascertain the average weight of binding material a truck loaded to its full capacity with sugarcane was weighed. The gross weight was 37 quintals and 36 kgs. Shri Shobha Ram, the owner of the sugarcane was directed to remove the joon (binding material) of sugarcane. The weight of M. Trolley was found to be 21 quintals and 40 kgs. Subtracting the weight of trolley from the gross weight, the weight of sugarcane with binding materials worked out at 15 quintals and 96 kgs. Then followed the calculation which may be extracted:

"The above farmer (kastkar) also reported that the sugarcane was being purchased at Rs. 9. 10 p. per quintal. Approximately about 1800 quintals cane was lying at site. The weight of the joon (binding material) after it had been removed came to 32 kgs."

If the actual weight of the binding material in respect of 1800 quintals of sugarcane turned out to be 32 kg., obviously per each quintal it would be much less than 0.625 kg. Mr. Shanti Bhushan, however, attempted to urge that the last sentence in the Report is disjointed and misplaced and he wanted us to read the Report as meaning that the weight of sugarcane in the trolley was 15.96 kg. and that the weight of the binding material in respect of the same was 32 kg. and, therefore, on an average it would work out at 2 kg. per quintal. It is not possible to read the Report in the manner indicated by Mr. Shanti Bhushan. In fact, the Report was produced on behalf of the petitioners and not a word has been stated in the affidavit to which it is annexed as to how the Report is to be read. It would thus appear that the rate of rebate set out in the impugned Notification bears resemblance to the sample testing of actual weight of binding material used in binding sugarcane when brought in bundles to the khandsari factory.

Our rejection of the submission should not be interpreted to imply that no case is made out for upward revision of the rate of rebate for binding material. There is by the law of average as recently worked out in 1980-81, an examinable case for revision up to at least 0.741 kg. per quintal. We do not purport to indicate the figure as a judicial pronouncement but we believe that the Central Government would continue its examination of the request made by Indian Sugar Mills Association, shelved because of these petitions, for upward revision and realistically examine the same as early as possible and before the next crushing season commences. With this we reject the submission that the fixation of rate of rebate at 0.625 kg. per quintal in the impugned notification is arbitrary or unrelated to trade and practice.

Mr. Kacker, learned counsel who appeared in Writ Petitions 777-796 and 1131-52/81 urged that the impugned notification places a restriction on the freedom of trade guaranteed to the petitioners under Article 19 (1) (g) and as it is neither shown to be reasonable nor imposed in public interest, it is violative of the freedom of trade and is, therefore, void.

Whenever it is contended that a regulatory measure imposes restriction upon the freedom of trade guaranteed by Articles 19 (1) (g), it must be shown that the restriction so imposed directly and proximately interferes in presenti with the exercise of freedom of trade. If the alleged restriction does not directly or proximately interfere with the exercise of freedom of trade, the freedom guaranteed by Article 19 (1) (g) is not violated. Petitioners contend that they have a right to carry on trade on manufacturing khandsari sugar and for facilitating the carrying on of this trade they have to buy the raw material called sugarcane. When they buy sugarcane in the absence of minimum price for sugarcane the sugarcane grower and the producer of khandsari sugar are free to negotiate the price. The negotiated price would take care of the condition in which sugarcane should be supplied. It would be open to the producer of khandsari sugar to buy sugarcane from the grower who may be asked to bring sugarcane not bound in bundles. The rebate for binding material is to be allowed only when sugarcane is brought to the khandsari sugar producing unit bound in bundles. It is always open to the purchaser of sugarcane to insist upon the grower bringing the sugarcane not bound in bundles and he is free to negotiate the price when price or minimum price of sugarcane is not fixed and the impugned notification will not even remotely impinge upon his freedom to carry on his trade. Therefore, the short answer is that the restriction complained of does not directly and proximately interfere with the exercise of freedom of trade and Article 19 (1) (g) is not attracted.

Assuming that the impugned notification making it obligatory to grant rebate for binding material when sugarcane is brought bound bundles to the extent prescribed in the impugned notifica-

tion does impose a restriction on the freedom to carry on trade, the next question is, whether the restriction is reasonable and imposed in the interest of general public. Once it is assumed that the impugned notification imposes a restriction on the freedom of trade, the burden is on those who support it, to show that the restriction imposed by the impugned law is reasonable and is imposed in the interest of general public. In other words, the burden is on those who seek the protection of clause (6) of Article 19 not on the citizen who says that the restrictive enactment is invalid (see *Saghir Ahmad v. The State of U.P. & Ors.*,⁽¹⁾ *Khyerbari Tea Co. Ltd. & Anr. v. The State of Assam*⁽²⁾ and *Vrajlal Manilal & Co. and Ors. v. State of Madhya Pradesh & Ors.*,⁽³⁾). It is of course not necessary to recall the dissent of Sarkar, J. in *Khyerbari Tea Co. Ltd. case*. The learned judge was of the view that the whole theory of burden of proof rests on the assumption that clause (6) of Article 19 carves out an exception and that the burden to prove that the case is covered by the exception is on him who pleads the same, but it was observed that this way of reading the Constitution is not proper and one may legitimately say that there is no exception because the real fundamental right is what is left after the restriction has been imposed. Consistently with the majority view, the burden will be on the authority who claims the protection of clause (6) of Article 19 to show that the restriction is a reasonable one and that is imposed in the interest of general public.

Having settled the question of burden, the passing submission made by Mr. Kacker may be dealt with. It was urged that in the batch of petitions in which he appears neither the Union Government nor the State of Uttar Pradesh has filed counter-affidavit and therefore, one can say that no attempt has been made to justify the restriction. We are not disposed to accept this submission because the Union Government has filed counter-affidavit in Writ Petitions Nos. 6443-6444 of 1980 and all the petitions in this batch raised identical contentions and were directed to be heard with Writ Petitions

Nos. 6443-6444 of 1980. Undeserved respect for processual justice may have persuaded us to direct the Union Government to file a copy of the counter- affidavit in each petition which we consider superfluous. At any rate, the petitioners in the petitions in which Mr Kacker appears, were supplied a copy of the counter affidavit and therefore this passing submission must be negatived.

If freedom of trade postulates, inter alia, freedom to negotiate price for purchase and sale both the raw material and the finished product, the control order confers power to fix price of sugarcane and to that extent there is a restriction on freedom of trade. But the restriction is not under examination here Even when he is left free to negotiate the price where either the Central Government or with the approval of the Central Government, the State Government does not fix minimum price or price of sugarcane there is a further restriction on his freedom of negotiating the price because he is statutorily bound to give rebate for the binding material as prescribed in the impugned notification. To that extent one may give credence to the contention that there is a marginal restriction on the freedom of trade.

The statutory prescription of quantum of rebate for binding material has been prescribed for the benefit of sugarcane growers. Producers of sugar and khandsari sugar constitute a powerful trade lobby, the fact of which one can take judicial notice. Sugar being an essential commodity occasionally kept in short supply and being a commodity needed for consumption by almost the entire population, the powerful industry magnates in this field are in a position to dominate both the growers of sugarcane as also the consumers of the essential commodity. Number of regulations have been enacted almost since the dawn of independence to regulate this powerful combination of manufacturers of sugar and khandsari sugar all over the country for the ultimate benefit of consumers on the one hand and on the other hand the farmers and the growers of sugarcane with their small holdings and raising a perishable food crop. The marginal farmers, are unable to stand up against the organised industry. It does not require long argument in this predominantly agricultural society that the farmers having small holdings need protection for selling at fair price their meagre agricultural produce. As far back as 1953, the U.P. Legislature enacted U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953, for rational distribution of sugarcane to factories, for its development on the organised scientific line, to protect the interest of cane growers and of the industry, etc. Constitutionality of this Act was challenged on various grounds including one under Article 19 (1) (g) In Ch. Tika Ramji & Ors. v. The State of Uttar Pradesh & Ors.,(1) this Court repelled the challenge under Article 19 (1) (g) holding that the restriction which is imposed upon the cane-growers in regard to sales of their sugarcane to the occupiers of factories in areas where the membership of the Cane-growers Co-operative Society if not less than 75 per cent of the total cane growers within the area, is a reasonable restriction in the public interest designed for safeguarding the interest of the large majority of growers of sugarcane in the area and works for the greatest good of the greatest number. The proposition is now beyond the pale of controversy that the State can impose a restriction in the interest of general public on the right of a party to contract where in the opinion of the Government the contracting parties are unable to negotiate on the footing of equality. Constitutional validity of statutes prescribing minimum wages has been founded on this proposition. The principle can be effectively extended to the powerful sugar industry and the cane growers because the cane growers admittedly are at a comparative disadvantage to the producers of sugar and khandsari sugar who were described in the course of arguments as sugar barons. It does

not require an elaborate discussion to reach an affirmative conclusion that sugarcane growers who are farmers cannot negotiate on the footing of the equality with the producers of sugar and khandsari sugar. The State action for the protection of the weaker sections is not only justified but absolutely necessary unless the restriction imposed is excessive.

Viewed from another angle, the impugned restriction is entirely reasonable. If price or minimum price of sugarcane is fixed, the producers of sugar would try to circumvent the price by unrealistic and impermissible deductions. The rebate for the weight of binding material seems to be a source for indulging in this nefarious, if not wholly fraudulent conduct. It is equally well settled that the State can impose reasonable restrictions under clause (6) of Article 19 to prevent fraud or where advantage of a fraudulent conduct is sought to be taken (see *M/s. Fedco (P) Ltd. v. S.N. Bilgrami*(1)). The impugned restriction serves two-fold purpose: (i) it ensures price of sugarcane avoiding impermissible deductions; (ii) it circumvents possible fraud by making such deductions as would render illusory even the negotiated price, if not fixed price. And it is indisputable that if the rebate is not statutorily prescribed the cane growers will be at the mercy of the producers of sugar and khandsari sugar. If price or minimum price of sugarcane can be fixed by the State, because this power was never questioned before us, this very power comprehends the power to provide such incidenta land ancillary regulations which will ensure the price. Price fixation measure is for protection of the farmer from the exactions of producers against which he cannot protect himself. (See *Lee Nebbia v. People of the State of New York*)(1). The impugned measure ensures price either fixed or negotiated and, therefore, it is a restriction which is undoubtedly reasonable and is imposed in the interest of general public and the guarantee of freedom of trade is not violated.

The last submission is that in order that the restriction may be reasonable it must have reasonable relation to the object which the statute seeks to achieve and must not be in excess of the object. It was urged that the Sugarcane Control Order was issued in exercise of power conferred by section 3 of the Essential Commodities Act. One of the objects sought to be achieved by the Essential Commodities Act, 1955, is to ensure availability at fair price the essential commodity to the consumers. It was further urged that one can visualise that the power to fix minimum price or price of sugarcane may have a rational nexus to the object sought to be achieved, namely, availability of sugar to the consumers at fair price. But it was urged that prescribing the rate of rebate for binding material has no relation with the aforementioned object. This submission does not commend to us for the obvious reason that the restriction is imposed in the interest of the cane growers and the State while ensuring that sugar, a commodity of daily consumption by almost every one in this country, is available to everyone at a fair price simultaneously wanted to ensure that the grower of sugarcane, another weaker section of the society is not left to vagaries of the trade or the powerful sugar industry. To strike the balance between the conflicting interests not only State acquired power to fix minimum price of sugar and khandsari sugar but that this wholesome effort may not work to the disadvantage of the sugarcane growers section of the society, the power to prescribe rate of rebate was acquired. And the power to fix price or minimum price comprehends the power to so regulate supply as to ensure the price so fixed and to ensure that in the name of unauthorised and unwarranted deduction the price fixed or negotiated is not rendered illusory.

Viewed from either angle the restriction is both reasonable and it is imposed in the interest of general public, and has a rational relation to the object sought to be achieved by the Control Order.

These were all the contentions in this batch of petitions and as none has merit in it, the petitions fail and are dismissed with costs; hearing fee in one set.

N.V.K.

Petitions dismissed.