

## **Tulsipur Sugar Co. Ltd. Etc vs Secretary To The Government Of U.P. & Ors on 2 May, 1986**

**Equivalent citations: 1987 AIR 443, 1986 SCR (2) 942, 1987 ALL. L. J. 102, 1986 (3) SCC 267, (1986) 2 CURCC 553, (1986) 3 SUPREME 133, (1986) 63 STC 192, (1986) 3 SCJ 11, (1986) JT 328 (SC), 1987 UPTC 10, AIR 1987 SUPREME COURT 443, 1987 ALL. L. J. 102 1986 UJ(SC) 2 662, 1986 UJ(SC) 2 662**

**Author: R.B. Misra**

**Bench: R.B. Misra, P.N. Bhagwati, O. Chinnappa Reddy, V. Khalid, G.L. Oza**

PETITIONER:

TULSIPUR SUGAR CO. LTD. ETC.

Vs.

RESPONDENT:

SECRETARY TO THE GOVERNMENT OF U.P. & ORS.

DATE OF JUDGMENT 02/05/1986

BENCH:

MISRA, R.B. (J)

BENCH:

MISRA, R.B. (J)

BHAGWATI, P.N. (CJ)

REDDY, O. CHINNAPPA (J)

KHALID, V. (J)

OZA, G.L. (J)

CITATION:

1987 AIR 443                      1986 SCR (2) 942

1986 SCC (3) 267              JT 1986 328

1986 SCALE (1) 956

ACT:

U.P. Sugarcane (Purchase Tax) Act, 1961, s. 14 - Sugar Factories - Grant of remission of purchase tax - Whether premissible/discriminatory.

Words and Phrases: "encourage or regulate" - Meaning of - s.14(1)(a) U.P. Sugarcane (Purchase Tax) Act, 1961.

HEADNOTE:

Section 3(1)(a) of the U.P. Sugarcane (Purchase Tax) Act, 1961 provides for imposition of tax on the purchase of

sugarcane by the owners of sugar factories. Section 14(1) of the Act empowers the State Government to grant remission in whole or in part of the tax payable in the public interest, with a view to (a) encourage or regulate the supply of sugarcane to, or its purchase by the factories, or (b) encourage the establishment of new factories, or (c) assist factories established after the crushing season 1957-58 and purchasing sugarcane yielding low sugar recovery.

The Central Government by a notification dated September 29, 1973 issued under cl.(3) of the Sugarcane (Control) Order, 1966, fixed the minimum price of sugarcane for factories situated in eastern U.P. at Rs. 8.38 per quintal. To meet the growers demand for a higher price the Government of U.P. refixed the sugarcane price at Rs.12.25 per quintal for the sugar mills situated in the east zone. The sugar factories not being in a position to pay the higher price approached the State Government who by two notifications dated January 25, 1975 issued under s.14(1)(a) of the Act granted remission in purchase tax to the extent of Re. 0.51 per quintal to twenty sugar factories in the area for the assessment year 1973-74.

The appellants and some other factories having been denied any remission in purchase tax, challenged the notifications by filing petitions under Art. 226 of the Constitution which were dismissed by the High Court.

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In these appeals by special leave, it was contended for the appellants that the State Government in refusing to extend the remission to the appellants had discriminated against them by singling them out for treating differently as the encouragement and regulation contemplated by cl.(a) of s.14(1) of the Act was necessary to all the factories in the eastern zone and not to a fortunate few, and that the impugned notifications suffered from the vice of Art. 14 of the Constitution in as much as the Government had discriminated between the factories falling in the same group as those which had a recovery of 8.5 or less had been granted remission, while the appellants who were also in similar position had been left out.

Dismissing the appeals, the Court,

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HELD: 1. Article 14 of the Constitution forbids class legislation but permits reasonable classification. It, however, must fulfil the twin requirements: (1) it must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (2) that the intelligible differentia must have a relationship to the object sought to be achieved by the statute. [950 C-D]

2. Section 14(1) of the Act confers a discretionary power on the State Government. It has been left entirely to the State to decide whether any particular factory should be granted remission or not, guided by the purpose set out in

the relevant clause. Neither in cl. (a) nor in any other clause of s. 14(1) there is anything to indicate that the State Government must grant remission to all sugar factories for encouraging or regulating the supply of sugarcane. [948 E-F]

3. The three clauses of sub-s. (1) of s.14 of the Act have different object and purpose. The purpose of granting the power of remission under cl. (a) is encouragement and regulation of the supply of sugarcane, the object of cl.(b) is to encourage the establishment of new factories, and that of cl.(c) is to assist factories established after the crushing season 1957-58 and purchasing sugarcane yielding low recovery factory situated in one area or falling in one category may be in need of remission, while those which were not either

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situated in that area or did not fall in that category may not need it. Though the power conferred by cl.(a) is to be exercised for the purpose of encouraging and regulating the supply of sugarcane, in exercising this power the State Government may legitimately take the view that this purpose necessitates the grant of remission only to the sugar factories purchasing sugarcane yielding low recovery. [948 C-E]

4. The word 'encourage' in cl.(a) of s.14(1) suggests that the State Government is required to exercise the power where it feels that the sugar factory requires the help for the purpose of making purchases of sugarcane. The word 'regulate' contemplates that the said power can be exercised with a view to take measures to promote the sale of sugarcane. If the power conferred by cl.(a) of s.14(1) has been exercised for the purpose of granting remission to only those sugar factories which purchase sugarcane of low recovery, there is nothing wrong in so doing. [949 D-E]

5. In the instant case by granting the remission only to sugar factories purchasing sugarcane of low recovery, the State Government has not violated Art. 14 of the Constitution. Nor was there any contravention of the provisions of cl.(a) of s.14(1). Such a question would have arisen if the grant of remission were founded on a ground extraneous to the provisions of s. 14(1). [949 A-B]

6. The immediate factor affecting the economy is the recovery of sugar from sugarcane and the sugar content in the cane produced goes a long way to determine the cost of sugar. Thus, the sugar factories which were purchasing sugarcane yielding low recovery are distinguishable as a class separately from those which did not fall in it and there was a reasonable basis to classify those left out of that group. [950 F-G]

Anant Mills Co. Ltd. v. State of Gujarat & Ors., [1975] 3 S.C.R. 220, referred to.

JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1774 of 1980 etc. From the Judgment and Order dated 28. 7. 1978 of the Allahabad High Court in Civil Misc. Writ No. 495 of 1975.

B.R.L. Iyenger, Yogeshwar Prasad, S.P. Gupta, V.P. Sachthey, K.K. Venugopal, O.P. Rana, Dr. Y.S. Chitale, K.G. Bhagat, F.S. Nariman, Soli J. Sorabjee, H.K. Puri, G. Gopalakrishnan, Khaitan & Co., A. Subba Rao, Naunit Lal, K.M.K. Nair, J.B.D. & Co., P.R. Ramasesh, Bishambar Lal, G. Subramaniam, Ms. S. Dikshit, Ms. A. Subhashini, K.R. Nambiar, R.N. Poddar, B.M. Nagaria, Mrs. Rani Chhabra, R.B. Datar, P.H. Parekh, K.R. Nagaraja, B.D. Sharma, V.J. Francis, S. Markendaya, R.N. Sachthey, R. Ramachandran, S.S. Khanduja, Manoj Swarup & Co., P.K. Pillai, Baggar, K.L. Mehta, Swarup John & Co., G.S. Ramarao, C.V. Subba Rao, S.K. Gupta, G.S. Chatterjee, Probir Mittra, Mrs. J. Wad, S.K. Gambhir, Pramod Dayal, R.K. Jain, S.R. Srivastava, K.K. Mohan, Dhantaraj, D.K. Agarwal, S.K. Gupta, Raju Ramachandran, Ravindra Bana, Vinoo Bhagat, K.K. Jain, A.D. Sanger, Girish Chandra, C.K. Sucharita, T.C. Sharma, Mrs. Kitty Kumaramangalam. A.V. Rangam, R.V. Ratnam and D.M. Popat for the appearing parties.

The Judgment of the Court was delivered by D R.B. MISRA, J. The present group of appeals directed against the judgment of the High Court of Judicature at Allahabad dated July 28, 1978 raises a common question of law. These appeals arise out of petitions under Article 226 of the Constitution challenging the two Notifications dated January 25, 1975 issued under section 14 of the U.P. Sugarcane (Purchase Tax) Act, 1961 (hereinafter referred to as the Act for short). The petitioners also sought a Mandamus directing the State Government to grant remission in purchase tax of 0.51 paise per quintal to all the Sugar factories situated in the State of U.P. As the pattern of facts is similar in all the cases, we would refer to the facts of Civil Appeal arising out of Writ Petition No. 409 of 1975 filed by M/s. Shri Sitaram Sugar Company Limited, Bhailtapur, District Deoris, against the State of Uttar Pradesh and others to bring out the question for consideration in these appeals.

The petitioner is a Public Limited Company and owns a sugar factory in Deoria known as Shri Sitaram Sugar Company Limited, Bhailtapur, U.P. The Sugar Factory is engaged in the manufacture of sugar by Vacuum Pan Process. It purchases sugarcane from the reserved area allocated to it under the provisions of U.P. (Regulation of Supply and Purchase) Act, 1953 and Sugarcane Control Order, 1966. By a Notification dated September 29, 1973 issued under clause 3 of the Sugarcane (Control) Order, 1966, Central Government fixed the price of sugarcane for the factories situated in Uttar Pradesh. The minimum price fixed by this Notification for the area in which the petitioner's factory was situated was Rs. 8.38 per quintal. The cane growers felt agitated as according to them, the price fixed was much too low. They, therefore, made representation to the U.P. Government and as a result thereof the U.P. Government intervened in the matter and fixed sugarcane price at Rs. 12.25 per quintal for the Sugar Mills situated in the East Zone. According to the petitioner, however, the price fixed was exorbitant and as the petitioner and other sugar factories were likely to suffer enormous losses, the Sugar Factories approached the State of U.P. and brought to its notice that they were not in a position to pay the higher sugarcane price. The stand of the appellant-petitioner and others is that the Chief Minister was satisfied with the demand made by the sugar factories and he assured them that the State Government would grant remission in purchase tax to all the factories

situated in the East Zone. By a Notification issued under section 14(1) of the Act, the State Government granted remission to the extent of 0.51 paise per quintal to 18 Sugar Factories mentioned in the area. By another Notification of the same date, two more factories were granted the remission. As the remission was not granted to the appellant-petitioner and to some other factories similarly situated, they filed petitions under Article 226 of the Constitution challenging the aforesaid Notification issued by the State Government.

The State of U.P. resisted the petitions and denied the allegation of promissory estoppel and discrimination set up in the writ petition. The High Court dismissed those petitions by the impugned judgment. They have now approached this Court by special leave and raised the same contention before this Court as was raised by them before the High Court.

In order to appreciate the points involved in the case, it would be appropriate at this stage to refer to the relevant provisions of the Act. Section 3 of the Act lays down that there shall be levied a tax on the purchase of sugarcane by the owner of (a) a factory at the rate of twenty five paise per maund of sugarcane; and (b) a unit at the rate of fifty paise per quintal. Section 3-A(1) provides that no owner of a factory shall remove, or cause to be removed any sugar produced in the factory either for consumption or for sale, or for manufacture of any other commodity in or outside the factory, until he has paid the tax levied under section 3, a sum specified under sub-section (2), sub-section (3) or sub-section (4). The next relevant section with which we are directly concerned is section 14. It confers powers on the State Government to grant remission. As the decision of these appeals hinges upon the interpretation of section 14(1), it would be advisable to read the section in full. Section 14(1) reads :

"Section 14(1). The State Government, on being satisfied that it is necessary so to do in the public interest, with a view to -

(a) encourage or regulate the supply of sugarcane to, or its purchase by factories ; or  
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(b) encourage the establishment of new factories ; or

(c) assist factories established after the crushing season 1957-58 and purchasing sugarcane yielding low sugar recovery, May by notification in the Gazette, remit, in whole or in part, the tax payable under this Act, in any assessment year, by every such factory falling under Clause (a) or Clause (b) or Clause

(c)."

In the instant case, the Notification remitting the purchase tax was issued by the State Government on being satisfied so to do in the public interest with a view to encourage and regulate the supply of sugarcane to, or its purchase by the factories in the State of Uttar Pradesh during 1973-74 assessment year.

Dr. Chitale, appearing for the appellants with his usual candour and fairness, gave up the plea of promissory estoppel and confined his argument to discrimination made by the State Government in granting remission of tax to some factories and not to the appellants. According to him the encouragement and regulation as contemplated by clause (a) of section 14(1) of the Act was necessary to all the factories in the eastern zone and not only to a fortunate few. But the U.P. Government has refused to extend the remission to the appellant illegally when clause (a) of section 14(1) contemplates giving benefit to all the factories and there was no justification for singling out the appellants For treating them differently.

The power conferred by clause (a) of section 14(1) of the Act, the counsel contends, could not be confined to Factories purchasing sugarcane yielding low recovery inasmuch as this was a consideration foreign to the purpose contemplated by clause (a) of section 14(1) of the Act.

The three clauses of sub-section (1) of section 14 of the Act have different object and purpose. The purpose of granting the power of remission under clause (a) is "encouragement and regulation" of the supply of sugarcane, the object of clause (b) is to encourage the establishment of new factories, and that of clause (c) is to assist factories established after the crushing season 1957-58 and purchasing sugarcane yielding low recovery. Section 14(1) confers a discretionary power on the State Government. Reading section 14 as a whole, it cannot be said that it was obligatory on the part of the State to grant exemption or remission to all the factories. The discretion has been left to the State Government to decide whether any particular factory should be granted remission or not guided by the purpose set out in the relevant clause. Neither in clause

(a) nor in any other clause of section 14(1) of the Act, there is anything to indicate that the State Government must grant remission to all sugar Factories for encouraging or regulating the supply of sugarcane.

The reason is obvious. It may be that a factory situated in one area or falling In one category is in need of this remission while those which are not either situated in that area or do not fall In that category may not need it. It is true that the power conferred by clause (a) is to be exercised For the purpose of encouraging and regulating the supply of sugarcane but in exercising this power, the State Government may legitimately take the view that this purpose necessitates the grant of remission only to the sugar factories purchasing sugarcane yielding low recovery. By granting the remission only to sugar factories purchasing sugarcane of low recovery, the State Government in our opinion has not violated Article 14 of the Constitution. Nor Is there any contravention of the provisions of clause (a) of section 14. The question of contravention would arise if the grant of remission were founded on a ground extraneous to the provisions of section 14. The Notifications issued by the State Government clearly show that the remission was granted with the sole object of encouraging and regulating the supply of sugarcane to these factories. The exercise of the power by the State Government was in accordance with the provisions of clause (a), sub-section (1) of section 14 and that by granting the remission to a few sugar factories it did not frustrate the purpose of the aforesaid provision. The use of expression "encourage or regulate" clearly indicates that the factories which really need encouragement or regulation should get the benefit of the remission under clause (a) of sub-section (1) of section 14. The word "encourage" suggests that the State Government is

required to exercise the power where it feels that the sugar factory requires the help for the purpose of making purchases of sugarcane. Similarly, the word "regulate" also shows that the said power can be exercised with a view to take measures to promote the sale of sugarcane. If the power conferred by clause (a) of sub-section (1) of section 14 has been exercised for the purpose of granting remission to only those sugar factories which purchase sugarcane of low recovery, there is nothing wrong in so doing.

It was next contended by Dr. Chitale that the factories which had recovery of 8.5 or less had been granted the remission. Some of the appellants were also in similar position and they have been refused unjustifiably and the State Government had discriminated between the factories falling in the same group and thus the Notification issued on January 25, 1975 suffered from the vice of Article 14 of the Constitution on that account also. This argument loses sight of the other clauses of the section, viz, clauses (b) and (c) of sub-section (1) of section 14. Clause (b) provides for encouraging the establishment of new factories and clause (c) contemplates assistance to factories established after crushing season 1957-58 and purchasing sugarcane yielding low sugar recovery. If the State Government had chosen to give remission to these factories because they fall under clause

(c), some argument could have been advanced against the validity of the Notification on that basis. Under clause

(c), remission is granted by way of support or aid to newly established factories to lessen the cost so that they could profitably compete in the market. The remission under clause

(c) has to be confined to new factories which is a different category of sugar factories. The considerations needed for exercising the power under clause (c) are different from those under clause (a) or (b). Considered from this aspect there is no discrimination at all.

Article 14 of the Constitution forbids class legislation but permits reasonable classification. It however must fulfil the twin requirements: (1) it must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (2) that the intelligible differentia must have a relationship to the object sought to be achieved by the Statute. If authority be needed, we may refer to *Anant Mills Co. Ltd. v. State of Gujarat & Ors.*, [1975] 3 S.C.R. 220.

The remission was granted only to the factories where the recovery from the sugarcane was low to enable the factories to make timely payments towards the cost of sugarcane and non-payment of the cane prices affecting the supply of cane to factories. It was in these circumstances that the Government granted remission to the factories which needed the help.

The immediate factor affecting the economy is the recovery of sugar from sugarcane and the sugar content in the cane produced goes a long way to determine the cost of sugar. Thus the sugar factories which were purchasing sugarcane yielding low recovery are distinguishable as a class separately from those which did not fall in it and there was a reasonable basis to classify those left out of that group.

For the foregoing discussion, the appeals must fail. must are accordingly dismissed. In the circumstances of the case, however, the parties shall bear their own costs.

All matters pending in this Court challenging the constitutional validity of the two Notifications dated January 25, 1975, will stand disposed of in terms of this judgment.

P.S.S.

Appeals dismissed.