Supreme Court of India
Saraswati Industrial Syndicate ... vs Union Of India on 30 August, 1974
Equivalent citations: 1975 AIR 460, 1975 SCR (1) 956
Author: M H Beg
Bench: Beg, M. Hameedullah

PETITIONER:
SARASWATI INDUSTRIAL SYNDICATE LTD. ETC.

Vs.

RESPONDENT:
UNION OF INDIA

DATE OF JUDGMENT30/08/1974

BENCH:
BEG, M. HAMEEDULLAH
BENCH:
BEG, M. HAMEEDULLAH
REDDY, P. JAGANMOHAN
ALAGIRISWAMI, A.

CITATION:
1975 AIR 460 1975 SCR (1) 956
1974 SCC (2) 630
CITATOR INFO :
R 1978 SC 215 (23)
RF 1978 SC1296 (35,50,60)
RF 1981 SC 873 (30,72)
RF 1987 SC1802 (9)
R 1988 SC1737 (86)
APL 1990 SC 334 (103)
R 1990 SC1277 (29,40)
RF 1990 SC1851 (25)

ACT:
Sugar (Control) Order, 1966, Clause 7--Central Govt. fixing the price "having regard to the estimated cost of production of sugar on the basis of the relevant schedule"--Fixation of price twice within one season--Govt. if obliged to make adjustments for losses due to any previous erroneous fixations.
Essential Commodities Act, 1955, Section 15--Fixation of the price of sugar in good faith--Suit for damages if could be initiated.

HEADNOTE:
Clause 7(1) of the Sugar (Control) Order, 1966, gives the Central Govt. power to fix the maximum sugar price by

notification in the official Gazette "from time to time." Clause 7(2) requires the Govt. to fix the price "having regard to the estimated cost of production of sugar on the basis of the relevant schedule". The appellants who have preferred these appeals on the certificate granted by the High Court under Art. 133(1)(c) of the Constitution have challenged the notification dated 28th June 1967 issued by the Central Govt. under act. 7 of the Sugar Control order fixing ex-factory prices for sugar factories specified in the notification on the ground that the method adopted in fixing prices of sugar manufactured in various States was not correct. They also alleged failure of the Central Govt. to take into account the fact that there was an initial fixation of prices of sugar by a notification dated 1st February 1967 followed by a final fixation on 28th June 1967. It was contended that appropriate adjustments or allowances should have been made in the final fixation by a notification of 28-6-1967.

Rejecting the contentions and dismissing the appeals.

HELD : (1) Price fixation is more in the nature of a legislative measure even though it may be based upon objective criteria found in a report or other material. It could not, therefore, give rise to a complaint that a rule of natural justice has not been followed in fixing the price. Nevertheless, the criterion adopted must be reasonable. Reasonableness, for purposes of judging whether there was an "excess of power" or an "arbitrary" exercise of it, is really the demonstration of a reasonable nexus between matters which are taken into account in exercising a power and the purpose of exercise of that power. [961 H; 1962 A-B]

Shree Meenakshi Mills Ltd. v. Union of India [1974] 1 S.C.R. 468 and The Panipat Cooperative Sugar Mills v. The Union of India [1973] 2 S.C.R. 860 relied on.

The Premier Automobiles Ltd. v. Union of India, referred to.

The appellants have not asserted that they incurred losses or did not make reasonable profits. The practice of fixing the prices, once during the initial months of the crushing season on the data then available and the other at the end of the season, has been invariably followed. From the very nature of things, fixation or refixation of ex-factory price could not take place on any other basis. It could not be delayed until the whole season came to an end leaving the price fixed for the previous season, which was the only other alternative, to govern sales. The passage in page 116 of the report of the Sugar Enquiry Commission and the expressions "year to year in the same zone" and "determined annually" occurring therein clearly show that the Commission meant to lay down only guide-lines in determining relevant criteria for maximum price fixation. What is most important to note, however, is the reference to the margin of profit, which the two sets of schedules, containing different heads filled in for determining cost of manufacture, do not

mention. It is evident that the schedules are not all embracing. Again the passage at p. 115 shows that the concept of a
957
"fair-price", implied in a reasonable fixation., and not some mechanical formula. ignoring profits or losses altogether. was contemplated by the Commission. It cannot, be said that the Government, in fixing the price of sugar in 1967, took into consideration any extraneous matters or that it acted arbitrarily or unreasonably in doing so. [967 B-C; 965 D-H]

(ii)Clause 7(2) requires the Govt. to fix the price "having regard to the estimated cost of production of sugar on the basis of the relevant schedules." The expression "have regard to" only obliges the Govt. to consider as relevant data the material to which it must have regard. [959 A-B]

Ryots of Garabandho and other- Villages v. Zemindar of Parlakimedi & Anr. 70 I.A. 129 referred to.

It is evident that the price fixed is an estimated maximum price chargeable because the manufacturer cannot charge more. Furthermore, the only "adjustment" provided for is before a fixation of the estimated Price "having regard" to the basis provided by the relevant schedule, but there is no obligation whatsoever cast upon the Govt. to make any "adjustment" to compensate for losses due to any previous erroneous fixations. Indeed, such attempted adjustments may seem to be unfair to subsequent consumers who ought not to be made to pay for past benefits possibly enjoyed by others. Both sets of schedules give considerable freedom to the Govt. in choosing what could properly determine the "fair price" to be fixed. Items to be taken into account are broadly stated. They are not tied down to such particulars such as excise duty insisted upon by the appellants. It is not possible to read into clause 7(2) an obligation to fix the price either on an All India basis or five region basis. It is enough if the basis adopted is not shown to be so patently unreasonable is to be in excess of the power to fix price. This power is confined to fixation for the purposes mentioned in Essential Commodities Act, 1955. [1950 B-C; 961 B & F]

(iii)The clear implication of Sec. 15 of the Essential Commodities Act, 1955, is that no suits or other legal proceedings, apart from those specified in the Constitution, can be brought against the Govt. or its officers for any action taken by the Govt. in fixing the price of sugar in good faith. Mere is no allegation made by the appellants that the action of the Govt. in fixing the price within a season was lacking in good faith. Hence, no proceedings could have been brought in a Civil Court to claim damages against the Govt. even if it bona fide action was vitiated by some illegality of the kind set up by the appellants 968 B-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1928/67, 1274-76, 1293, 1356-57/68.

Appeals from the Judgment and orders dated the 10th October 1967 and 5th February 1968 of the Delhi High Court in Civil Writ Nos. 1218, 1295-97, 1320, 1344 and 1318 of 1967 respectively.

B.Sen. Bishambar Lal, H. K. Puri, P. V. Kapur and S. C. Patel for the appellant in C. A. 1928/67. H. K. Puri for the appellants in C. As. 1274-76 and 1293/68.

S. T. Desai and D. N. Mukherjee for the appellant in C. A. No. 1356/68.

D. N. Mukherjee; for the appellant in C. A. 1357/68. Girish Chandra and S. P. Nayar- for the respondents, except C. A. 1928 and 1275/68.

G.L. Sanghi, Girish Chandra and S. P. Nayar for the respondents in C. A. 1928 and 1275 of 1968.

The Judgment of the Court was delivered by BEG, J. The appellants are manufacturers of sugar, who have come before us after certification of their cases as fit for appeal to this Court tinder Article 133(1)(c) of the Constitution. They challenged the notification dated 28-6- 1967 issued by the Central Government under clause 7 of the Sugar (Control) Order, 1966, fixing ex-factory prices for sugar factories specified in the notification. It appears that, in the Writ Petitions filed in the High Court for quashing the impugned notification and appropriate orders in the nature of mandamus, the validity of section 3 of the Essential Supplies Act 10 of 1955, as well :as of the Sugar (Control) Order, 1966, issued under it were questioned. But, before us, the appellants have confined their arguments to contentions based on the correctness of the method adopted in fixing prices of sugar manufactured in various States, and the alleged failure of the Central Government to take into account the fact that there was an initial fixation of prices of sugar by a notification dated 1-2-1967 followed by a final fixation on 28-6-1967. According to the appellants, appropriate adjustments or allowances should have been made in the final fixation by a notification of 28-6-1967. We are, therefore,]lot concerned now with any question relating to the validity of clause 7 of the Sugar (Control Order) under which the notifications were issued.

The relevant clause 7 reads as follows:

"7. Power to fix sugar prices:-

(1) The Central Govt. may from time to time by notification in the Official Gazette, fix the price or the maximum price at which any sugar may be sold or delivered and different prices may be fixed for different areas or different factories or different types or grades of sugar.

(2) Such price or maximum price shall be fixed having regard to the estimated cost of production of sugar determined on the basis of the relevant schedule of cost given in the Report of the Sugar

Enquiry Commission (October 1965), subject to the adjustment of such rise in cost subsequent to the Report aforesaid as, in the opinion of the Central Government, cannot be absorbed by the provision for contingencies in the relevant schedule to that Report.

(3) Where the price or the maximum price has been so fixed, no person shall sell or purchase or agree to sell or purchase any sugar at a price in excess of that fixed under sub-clause (1) :

Provided that the price at which sugar may be sold for delivery otherwise than ex-factory shall not exceed the price or the maximum price, as the case may be, fixed under sub- clause (1) for sale ex-factory plus such charges in respect of transport to any town or any specified area and other incidental charges as may be fixed by the concerned State Government or by any officer authorised in this behalf by the Central Government or that State Government in accordance with the instructions issued by the Central Government in this behalf from time to time."

Clause 7(2), set out above, requires the Govt. to fix the price "having regard to the estimated cost of production of sugar on the "basis of the relevant schedule". The expression "having regard to" only obliges the Govt. to consider as relevant date material to which it must have regard (See Ryots of Garabandho and other Villages v. Zemin- dar of Parlakimedi & Anr. (1). The appellants concede that this is the effect of language of cl. 7(2). It is evident that the price fixed is an estimated maximum price chargeable because the manufacturer cannot charge more. Furthermore, it should be noted that the only "adjustment" provided for is before a fixation of the estimated price "having regard" to the basis provided by the relevant schedule, but there is no obligation whatsoever cast upon the Government to make any "adjustment" to compensate for losses due to any previous erroneous fixations. Indeed, such attempted adjustments may seem to be unfair to subsequent consumers who ought not, it could be argued, be made to pay for the past benefits possibly enjoyed by others.

The Sugar Commission had recommended that the country should be divided into five zones for the purposes of fixation of price of sugar in each zone. Its opinion was, that dividing the country into a large number of zones would make the price fixation of sugar "degenerate" into "cost plus basis". The reason given by the Commission against division of the country into larger number of zones was that this would encourage inefficient factories to remain inefficient instead of inducing them to effect economies by rationalization and modernisation so as to become efficient. The grievance of the appellant Saraswati Industrial Syndicate was that the Government had really divided the country into 22 zones and that it had, while doing so, taken into consideration the conversion charges on the basis of five zones putting Haryana in the same zone as Madhya Pradesh. It claimed that its efficiency as a manufacturer using modern methods was greater than that of factories in Madhya Pradesh although the wages it had to pay were higher than those paid by the Madhya Pradesh Manufacturers. It was difficult for the High Court, as it is for us, to determine these questions of fact on the meager material or bare assertions, not subjected to cross-examination, which are available in writ proceedings decided primarily on affidavits. Nevertheless, assuming that these assertions rest on a factually correct basis, we think that a modern manufacturer of sugar, with more efficient methods of production, would gain by a fixation of price which was profitable even for less efficient manufacturers. Even if we assume that the wages of laborers were somewhat higher in Haryana than those in Madhya Pradesh, without sufficient material to be able to arrive at a definite

conclusion on this matter, we think that the disadvantage to the Syndicate would be offset by the advantage it enjoys as a producer with a more modern and (1)70 I. A. 129.

efficient manufacturing technique. It is a well known fact that rationalisation of industry, by the use of modern methods, reduces the amount of labour needed in more mechanised modes of manufacture. Therefore we do not think that these assertions could prove any inequitable treatment meted' out to the Haryana manufacturers of sugar in any case no breach of a mandatory duty, which could justify the issue of a writ of mandamus, was established. We have also examined the grievance of the appellants that the price of sugar for the season 1966-67 was not determined in accordance with the relevant data. As already indicated above, the cost schedules given by the Commission were only guide-lines to indicate the relevant data in fixing the price. They were not like clear mandatory Statutory provisions which could be enforced without much difficulty. The Commission's report gives two sets of schedules which contain different heads filled in for determining cost of manufacture. One of these sets gives heads of cost of manufacture for future calculations based "on 10% recovery excluding basic cost of cane" (page 110) and with the "number of working days on the basis of 22 crushing hours". Here, the heads of costs are '(1) cost excluding basic cost of cane but including extra cost on cane (2) packing (3) grade differential (4) selling expenses (5) "dearness allowance escalation for 10 points". Another set of schedules of fair price fixation for the year 1963-64, for which the basic cost of cane was presumably known, after giving "average capacity", "average crushing days", and "average recovery per cent", contains the following heads (p. 117) "(1) raw materials-basic cost of cane (2) conversion charges including- extra cost of cane (3) packing charges (4) adjustment for extras due to grade differential (5) selling expenses (6) excise duty (7) return (8) fair ex-factory price"

Here, manufacturing "costs" are, presumably, covered by "conversion charges".

A perusal of the figures under the first set of tables shows that, as the number of working days is increased, the cost is, quite, naturally, reduced. The 10 % recovery basis merely indicates the amount of sugar obtained from the total quantity of sugarcane. But, from both sets of schedules, we find that there is considerable freedom given to the Government in choosing what could properly determine the "fair price" to be fixed. Items to be taken into account are broadly stated. They are not tied down to the particulars which, according to the learned counsel for the appellant, ought to have been taken into account. The criteria are elastic enough to either include or exclude some of the items put forward on behalf of the applicants as necessary to be taken into account. Some of the items which, according to the appellants, should be treated as items of cost may not even properly find a place there. For example it was suggested that excise duty was wrongly left out as an item of cost. There is nothing in the first set of schedules to indicate that excise duty must be taken into account in determining, the cost of production. In the second set of schedules excise duty is mentioned apart from manufacturing and other items of cost. Excise duty is really, imposed on goods when they have come into existence in the manufactured form. It could more properly be taken into consideration in determining nit profits than in calculating cost of manufacture.

One of the contentions on behalf of the petitioners was that prices should not have been determined on the basis of 22 zones but should have been determined either on an All India scale or for five

zones as recommended by the Sugar Enquiry Commission. costs of production, for purposes of price fixation, can only be determined on the basis of averages from data collected from each particular region- and con- ditions which affect factories in general in that region. It may. be that, on particular items, the Government may have reasons to regard data collected in one region to be unreliable. Other data collected in another region may be considered good enough for a more general use of it. The results of price fixation are actually given separately in an annexed table for each factory in each State and are not uniform. We cannot read into clause 7 (2) an obligation to fix the price either on an All India basis or five region basis. It is enough if the basis adopted is not shown to be so patently unreasonable as to be in excess of the power to fix price. This power is confined to fixation for the purposes mentioned in Essential Commodities Act, 1955. In any case, the appellants' objections could form the subject matter of representations which could have been made to the Government by each of the parties affected. If their case had substance, they ought to have made a demand for a more just fixation on what they considered to be more appropriate and reasonable basis before going to court. They had not done so.

The petitioners did not challenge the price fixation on the ground that a quasi-judicial procedure had to be adopted before prices are fixed even if such price fixation affects, as it must each factory. Price fixation is more in the nature of a legislative measure even trough it may be based upon objective criteria found in a report or other material. 15-L192SupCI/75 it could; not, therefore, give rise to a complaint that a rule of natural justice has not been followed in fixing the price. Nevertheless, the criterion-adopted must be reasonable. Reasonableness, for purposes of judging whether there was an "excess of power" or an "arbitrary" exercise of it, is really the demonstration of a reasonable nexus between the matters which are taken into account in exercising a power and the purposes of exercise of that power. This was made clear by this Court in the two cases cited on behalf of the appellants (1) Shree Meenakshi Mills Ltd v. Unions of India (1); (2) The Panipat Cooperative Sugar Mills V. the Union of India (2).

Shree Meenakshi Mills' case (supra) related to price fixation under the provisions of Cotton Textile (Control) Order, 1948. There, this Court observed. inter alia, that the case of Premier Automobiles Ltd. v. Union of India (3) "does not consider that concept of fair prices varies with circumstances in which and the purposes for which the price control is sought to be imposed," and, it indicated that the decision in that case was based on a "special agreement" involved there. The purposes of the Essential Commodities Act were thus explained (at p. 490) "The question of fair price to the consumer with reference to the dominant object and purpose of the legislation claiming equitable distribution and availability at fair price is completely lost sight of if profit and the producer's return are kept in the forefront. The maintenance or increase of supplies of the commodity or the equitable distribution and availability at fair prices are the fundamental purposes of the Act. If the prices of yarn or cloth are fixed in such a way to enable the manufacturer or producer to recover his cost of production and secure a reasonable margin of profit, no aspect of infringement of a fundamental right can be said to arise."

It was then said (at p. 490) :

"In determining the reasonableness of a restriction imposed by law in the field of industry, trade or commerce, it has to be remembered that the mere fact that some of those who are engaged in these are alleging loss after the imposition of law will not render the law unreasonable. By its very nature, industry or trade or commerce goes through periods of prosperity and adversity on account of economic and sometimes social and political factors. In a largely free economy when controls have to be introduced to ensure availability of consumer goods like food- stuff, cloth and the like at a fair price it is an impracticable proposition to require the Government to go through the exercise like that of a Commission to fix the prices."

(1) [1974] 1 S.C.R. p. 468.

(2) [1973] 2 S.C.R. 860.

(3) [1972] 2 S.C.R. 526.

'Even these Commissions cannot always make a correct estimate of a price which is fair to all because there are intricacies of the trade of all profit making enterprises, which a Commission may not be able to probe."

The Panipat Co-operative Sugar Mills' case (supra) the price of fixation of sugar under the Sugar (Price Determination) Order, 1971, on principles laid down by Tariff Commission and other expert bodies were considered by this Court. In that context it said (at page

875) "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."

In both the cases mentioned above the question was assumed to be one involving a determination of "fair price". In arriving at such an assessment, a reasonable margin of profits, judged by average standards of efficiency, could be provided for. In the cases before us, the appellants have not asserted that they incurred losses or did not make reasonable profits. In other words, they themselves ignore what appears to be an important aspect in all such price fixation so that one is left wondering whether their real complaint is not that they could not "profiteer". We are not satisfied that the Government, in fixing the price of sugar in 1967, to which the Writ Petitions in the appeals before us are confined, took into consideration any extraneous matters or that it acted arbitrarily or unreasonably in doing so. in the Saraswati Industrial Syndicate's case, which is accepted by both sides as the basic or the most comprehensive case from the point of view of relevant material on record, the counter-affidavit filed by Shri K. L. Pasricha, Joint Secretary, Ministry of Food, gives the

matters taken into account for the impugned price fixation as follows :

> "With reference to paragraphs 14 and 15 of the Writ Petition, I say that the correct facts are as follows :-
>
> (a) The fixation of ex-factory price of sugar is necessarily to be done initially about the time when the crushing season starts or when the deliveries from new season's production commence. This fixation has necessarily to be made on the basis' of estimates of the relevant data available at that time.Circumstances may require the revision to the exfactory price during the: seasons and, the final re- fixation, of. price generally takes place after the crushing season is over. Ever since the present control started in April 1963, the practice to above has been followed. From the very nature of things of fixation or re- fixation of ex-factory price cannot be done on any other basis.
>
> (b) For the reasons stated above, the Sugar (Control) Orders of 1963 and 1966 empower the Central Government to fix ex-factory price from time to time.
>
> (c) It is incorrect to state, as has been done in paragraphs 14 and 15 of the Writ Petition, that clause 7(2) of the Sugar (Control) Order, 1966 makes provision for any adjustment in respect of deliveries of sugar made prior to the date of any notification issued thereunder. All that the said sub- clause provides is fixation of a price having regard to the estimated cost of production.
>
> (d) From the very nature of things it is obvious that even the cost schedules, recommended by the Sugar Enquiry Commission are not based on the actual cost of production in any individual factory, but are based on the average of only a few sample factories taken into account by the Sugar Enquiry Commission, which necessarily results in the price not being based on actual cost of production in any individual factory.
>
> (e) It is also incorrect to state as has been done by the petitioner that the price which is so fixed under the Sugar (Control) Orders if fixed on the basis of the previous year's results. As a matter of fact, the price, which is so fixed,isanestimate on the basis of data not only of the previous year's results, but also on the basis of the working of more than one year in the past and also crop forecasts and various other factors relating to the commencing year in respect of which the price has to be fixed. The statement by the petitioner that the price is fixed by the Central Government on the basis of the previous year's working is on the face of it incorrect as in such an event there would be no necessity of making any estimate for the purpose of price fixation.and all that would be needed would be to continue the prevailing price.

The ex-factory price for the sugar factories in Punjab in- cluding Haryana was fixed at Rs. 137-35 per quintal by a Notification dated the 24th March, 1966. By Notification dated the 20th October, the

ex-factory price of such factories was revised to Rs. 134-55 per quintal. Thus, in point of fact the petitioner was benefited to the extent of Rs. 2-80 per quintal on all deliveries made from the production of the year 1965-66 up to the 19th October, 1966, because no adjustment was made or could be made under the provisions of the relevant Sugar (Control) Order regarding such benefit which accured to the petetioner as aforesaid We turn now to the questions whether there was a "provisional" fixation of :price by the notification of 1-2- 1967 or whether the socalled "final' fixation for the season- 1966-67 by the notification of 28 6-1967 was illegal for that reason. We find that clause 7 of the Control Order set out above does not contemplate only a "Provisional" or preliminary, fixation of maximum price to be followed by a "final" fixation for the whole season, such as,, according to the appellants, is supposed to have happened here. Clause 7(1) gives the Central Government power to fix the maximum sugar prices by notification in the official Gazette "from time to time" it was, therefore, contended on behalf of the Union of India that both the notifications complied with the requirements of the Control Order, because there is neither a provision for a provisional fixation, to be followed by a final fixation for a season, nor is any period of time between one fixation and another specified. In reply to this contention, Mr. Desai, learned counsel for the appellants in Civil Appeal No. 1356 of 1958, referred us to the statement in the counter-affidavit, set out above, and the Sugar Enquiry Commission report (at page 116) :

> "In actual practice, however, the duration and recovery may vary from year to year in he same zone. The ex-factory selling price in each zone will have to be determined annually with reference to the actual duration and recovery. The basic cost of cane and the margin of profit will have to be added to arrive at the ex-factory price. It may be reiterated that in applying the schedules, packing charges, grade, differentials and selling expenses should be kept constant per quints of sugar irrespective of recovery percentage while other items of cost should be adjusted in inverse proportion to the recovery percentage.

Although the passage set out above primarily refers to other matters which are to be taken into account in determining the ex-factory selling price of white sugar, yet, it is relied upon by Mr. Desai inasmuch as the terms "year to year in the same zone" and "determined annually" occur here. These passages- only indicate a practice. Furthermore, they show that the Commission meant to lay down only guide-lines in determining relevant criteria for maximum price fixation. What is most important to note, however, is the reference to the margin of profit which the schedules do not mention. It is evident that the schedules are not all embracing. We also find (at p. 116) in this Report :

> "Table X.5 gives the fair ex-factory price per quintal of white sugar (Grade D-29) for each Zone on the basis of actual recovery and duration pertaining to 1963-64 crushing season."

This shows that the concept of a "fair-price", implied in a reasonable fixation, and not some mechanical formula, ignoring profits or losses altogether, was contemplated by the- Commission.

The point which is common to all the appeals relates to the difference in price-fixed on 1-2-1967 and the price fixed on 28-6-1967. In the case of the appellant in Civil Appeal No. 1928 of 1967, prices fixed were 137-75 and 142.25 respectively. In the case of the appellant in Civil Appeal No. 1356 of 1968 the price fixed.on 28-6-1967 was 187.10. The argument was that, as the price fixed on 28-6-67 is the one which was revised at the end of the crushing season after taking into account the actual length of the season and recovery achieved, that represents the correct price for the whole season.', It was argued that in respect of the deliveries made between 1-2-1967 and 28-6-1967 at the rate of fixed on' 1-2-1967, the appellants have suffered considerable losses. It Wag submitted that the Government had to make some provision for compensating them for these losses.

The appellants relied on the following statement issued on behalf of the Government which has not been controverted :

> "1. According to the current practice, the ex- factory prices of sugar are fixed at the beginning of each year on the basis of expected recovery of sugar from cane and the length of crushing season. These prices' are revised at the end of the crushing season.- taking into account the actual length of the season and the recovery achieved in the different regions.
>
> 2.:Accordingly, the Government of India have reviewed the ex-factory prices of sugar for the current year in the light of actual recovery and duration obtained by sugar factories in Uttar Pradesh, Bihar, Punjab, Haryana, West Bengal, Rajasthan and Madhya Pradesh. The revised prices are as follows :

Price Region	Ex-factory price per quintal in rupees
Eastern Uttar Pradesh	139 -07
Part A of West U.P.	160 -32
Part 13 of West U.P.	147 - 37
Part C of West U.P.	140 - 83
Part D of West U.P.	136.61
North Bihar	139.88
South Bihar	187.88
Punjab	152.58
Haryana	142 -25
West Bengal	138.61
Rajasthan	159 -52
Madhya Pradesh	171.91

> 3. The revised prices have been notified today and come into effect immediately.
>
> 4. The prices for factories in other areas will be announced in due course".

We find that, in the previous year, the price actually fixed subsequently was lower than the price fixed originally so that various sugar producers, including, we presume, all the appellants, got the benefit of such higher prices fixed earlier. We mention this only to indicate that the price-fixation for

the whole season 1966-67 did not appear to be either arbitrary, capricious, or unfair.: As the High Court pointed out, it cannot, be contended that the estimate of manufacturing costs land the resulting fixation of price made in the beginning of February, 1967, Was wholly unrelated to the actual conditions which came to light after the working results of the crushing season as a whole were known at the end of the season. The practice of fixing the pieces once during the initial months of available and the other at the end of the season has been invariably followed. From the very nature ex factory price could not take Place, on any other basis. It could not e kept waiting until the whole season came to an end leaving the price fixed for the previous season, which was the only other alternative, to govern sales. The practice adopted was certainly fairer.

All the cases before us relate to the season 1966 to 1967 which was over long ago. No provision has been brought to our notice to indicate how the Government would be responsible to manufacturers for an erroneous fixation of price at which sugar may be sold during a particular season by manufacturers to dealers who can sell it to the consumers. Learned counsel suggested that, the. appellants could sue those to whom sugar was supplied at lower rates than should have been fixed. We find it very difficult to understand how the manufacturers could claim any thing, even by means of suits, from dealers with whom there were no agreements providing that any variation in price to be fixed by the Government will enable the manufacturers to recover the balance in case the fixation was too low. indeed, if the fixation of price is found to be too high for any reason, such as the failure to consider the amount of profits made by the manufacturers in a particular season, the manufacturers may have become liable to pay something back to the dealers had there been any provision in contacts between manufacturers and dealers for recovery of balances due to either side on subsequent fixations. It is enough to mention here that no such provision in any agreement has been brought to our notice. No dealers whose rights may be affected are before us to enable us to pronounce on their alleged liabilities. In the Saraswati Industrial Syndicate's case, there was an understanding given in the High Court by the Union of India that the Union will pay the syndicate the balance, on a redetermination of price, if the price fixed by the Government was found to be too low. We have no doubt that undertaking exhausted itself with proceedings in the High Court when the writ petition in appeal before us now failed.

We also find, in accordance with the well established practice of providing protection for action taken by the Govt. and its officers for actions of the nature sought to be quashed by the appellants, Section 15 of the Essential Commodities Act, 1955, lays down :

> "15(1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done. in: pursuance of any other made under' Section 3.
>
> (2) No suit or other legal proceeding shall lie against the Govt. for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of any order made under section 3".

This means that no suits or other legal proceedings, apart from those specified in the Constitution can be brought against the Govt. or its. officers for any action taken by the Govt. in fixing the price of

sugar in good faith. There is no allegation made by the appellants that the action of the Govt. in fixing the price twice within a season was lacking in good faith. Hence, no proceeding could have been brought in a Civil Court to claim damages against the Govt. even if its bona-fide action was vitiated,by some illegality, of the kind set up by the appellants. The result is that, even if we could have given a mere decla- ration that the price fixation for the season 1966-67 in good faith was vitiated by some illegality, such a delcaration would have been useless to the appellants. It is well established practice that Courts do not issue writs or make declarations which are futile.

We have already indicated above that it has not been shown to us how the fixation of maximum price by the Government for the season 1966 to 1967 was erroneous or unreasonable even though it was done twice witnin one season. There is no prohibition against such fixation of price twice within a season.]Each operated only from the date of fixation until it was fixed again. It had no retrospective effect. There could, therefore, be no claim for any readjustment against anyone simply because the price fixed in a subsequent period was higher or lower than the price fixed in the beginning of the same season. The essential requirements for invoking the writ issuing jurisdiction. of the High Court here that the fixation had to be shown to be ultra vires. This was not done by the petitioners-appellants. Hence, their writ petitions were rightly rejected by the High Courts. As the appeals fail on merits we need not discuss the technical difficulty which an application for a writ of certiorari would encounter when no quasi-judicial proceedings was before the High Court. The powers of the high Court under Article 226 are not strictly confined to the limits to which proceedings for prerogative writs are subject in English practice. Nevertheless the well recognised rule that no writ or order in the nature of a Mandamus would issue when there is no failure to perform a mandatory duty applies in this country as well. Evert in cases of alleged breaches of mandatory duties the salutary general rule which is subject to certain exceptions applied by us as it is in England when writ of Mandamus is asked for could be stated as we find it set out in Halsbury's Taws of England (3rd edition vol. 13 p. 106):

> "As a general rule the order will not be granted unless the party complained of has known what it was he was required to do so that he had the means of considering whether or not he should comply and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce and that that demand was met by a refusal."

in the cases before us there was no such, demand refusal. Thus no ground whatsoever is shown here for the issue of any writ order or direction under Article 226 of the Constitution. These appeals must be and are hereby dismissed but in the circumstances of the case we make no order as to costs.

Appeals dismissed.

V. M. K.