Supreme Court of India
The Anakapalle Co-Operative ... vs Union Of India (Uoi) And Ors. on 4 May, 1977
Equivalent citations: AIR 1977 SC 2041, (1977) 4 SCC 130, 1977 (9) UJ 431 SC
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Bench: A Gupta, P Bhagwati
JUDGMENT P.N. Bhagwati, J.

1. This is a group of applications made by the petitioners in various writ petitions for directions regarding discharge of batik guarantees given by them pursuant to interim orders made by this Court in the writ petitions. The writ petitions were filed by the petitioners in this Court challenging the validity of the Levy Sugar Supply Control Order, 1972 made under Section 3 of the Essential Commodities Act, 1955 fixing the price of levy sugar in different zones in the country, on the principal ground that the price so fixed was not in accordance with the principles laid down in Section 3, Sub-section (3C) of the Essential Commodities Act, 1955. When the writ petitions were admitted, an application was made by the petitioners in each writ petition for stay of the operation of the Levy Sugar Supply Control Order 1972 and this Court made an interim order on each of the applications staying the operation of the Levy Sugar Supply Control Order, 1972, on the petitioners in the respective writ petitions "furnishing a bank guarantee in respect of the difference between the price at which the sugar is actually sold" and it was provided in each of these Orders that such bank guarantees shall be furnished to the satisfaction of the Registrar of this Court every month in respect of the transactions of that month within four week's the actual sales of that month and that this Court shall deal with such bant guarantee is to how such amount is to be distributed or paid. Pursuant to these interim orders, the petitioners in such writ petition furnished bank guarantees and the result was that the operation of the Levy Sugar Supply Order, 1972 was stayed & the petitioners were free to charge open market rates for the sugar sold by them. The writ petitions were ultimately dismissed by this Court by a judgment delivered on 6th November, 1972, but during this period, unfortunately, by reason of the interim orders of stay granted by this Court, the petitioners who are manufacturers of sugar were able to funnel into their pockets large sums of money to the detriment of the small consumers. Since it was the judicial process which had kept the controlled price in cold storage and made it possible for the petitioners to fleece the helpless consumers who had no choice but to pay the higher price demanded by the petitioners, it was necessary to disgorge the petitioners, of the unjust enrichment made by them and to do justice to the large community of consumers who had been overcharged as a result of what has been described by this Court in another judgment as "judiciary declared holiday from control." There is no doubt that each consumer who had to pay more than the controlled price was entitled to recover the excess paid by him from the dealer who sold the sugar to him and the dealer in his turn was entitled to recover the excess paid by him from the petitioners, but it would be well nigh impossible for the small consumer to litigate for his little sum with the dealer or the petitioners. How would he able to meet the huge litigative costs and how long would he have to wait with long drawn out procedures, appeal, second oppeal, special appeal and Supreme Court appeal? Where would we have the time & capacity to engage in such an uneven light with the petitioners who had large resources available to them? To leave is to each small consumer to take action against the dealer or the petitioners for the purpose of recovering the little excess paid by him would be nothing short of denying relief to him and allowing the ill-gotten wealth to remain in the coffers of the petitioners. The legislative of Uttar Pradesh,

therefore, felt that something was necessary to be done in order to restore to the scattered community of small consumers their hard earned money improperly collected by the petitioners under the cover of judicial order and with that end in view, it enacted the Levy Sugar Price Equalisation Fund Act, 31, of 1976 (hereinafter referred to as the Act). In the mean while, applications were made by the petitioners for discharge of the bank guarantees given by them, since the writ petitioners were dismissed on 6th November, 1976. There applications could not be disposed of for a long time and whilst they were pending, the Act was brought into force and hence these applications have now to be disposed of in the light of the provisions contained in the Act.

2. The Act, came into force on 16th February, 1976 and it was enacted to provide for the establishment, in the interest of the general public, of a fund to ensure that the price of the levy sugar may be uniform throughout India and matter connected there with or incidental thereto. Section 2 contained the definition Clauses and of them, Clauses (a) and (b) are material which read as follows:

2(a) 'controlled price' means the price of the relevant grade of levy sugar, determined from time to time under Sub-section (3C) of Section 3 of the Essential Commodities Act, 1955, or under the Defence and Internal Security of India Rules, 1971, in relation to any year of production;

(b) 'excess realisation', in relation to each grade of levy sugar,-

(i) means the price realised by any producer, on the sale of levy sugar of such grade, in excess of

(b) where any fair price has been fixed by a court for levy sugar of such grade, such fair price, and

(ii) includes any realisation representing the difference between the controlled price and the price allowed by the court by an interim order, if such interim order is set aside, whether by the court which made the order of in appeal or revision.

Section 3, Sub-section (1) provided for establishment of a Fund to be called The Levy Sugar Price Equalization Fund' and Sub-section (2) of that section enacted inter alia that, save as otherwise provided in Sub-section (4), there shall be credited to the Pund the amounts representing all excess realisations made by the producers, irrespective of whether such excess realisations were made before or after the commencement of the Act. Sub-section (3) of Section 3 is material and since considerable reliance was placed upon it on behalf of the respondents it would be desirable to reproduce it in extenso:

(3) Save as otherwise provided in Sub-section (4), every producer shall,

(a)in the case of an excess realisation made before the commencement of this Act, within thirty days from such commencement,

(b)in the case of an excess realisation made after such commencement, within thirty days from the date on which such excess realisation was made, credit to the Fund, the amount representing such

excess realisations, together with interest due thereupon at the rate of twelve and a half per cent, per annum, from the date on which such amount was realised by him.

Sub-section (4) and (5) of Section 3 made provision in the following terms in regard to excess realisations made in pursuance of an interim order made by a court:

3(4) Where, by virtue of any interim order made by any court, whether before or after the commencement of this Act,-

(a) amounts representing the difference between the controlled price and price allowed by any court by an order made in this behalf, have been, or are required to be,

(i) kept with the producer himself, or

(ii) kept deposited with, or in the custody of any court, or

(iii) kept deposited with, or in the custody of, any Government, bank, authority or other person; or

(b) any amount in excess of the controlled price has been collected and kept by the producer under the cover of any guarantee given in pursuance of such order, it shall not be necessary to credit such amounts to the Fund so long as the court which passed the interim order does not so direct.

(5) Where, in pursuance of on interim order referred to in Sub-section (4), any amount representing the difference between the controlled price and the interim price allowed by the court is,

(a) held by any producer either with himself or with any other person or with any court, Government, bank or other authority, or

(b) collected and kept by the producer under the cover of any guarantee, such producers shall, on the final disposal of the proceedings of the court aforesaid, or in any court of appeal or revision, credit such amount, to the extent it represents any excess realisation, to the Fund.

Section 5 provided that where any amount is credited to the Fund under Section 3, the producer by whom such amount is credited shall, upon such crediting, be discharged from the liability to make repayment of such amount to the person entitled thereto and Section 6 gave a right to the buyer from whom any excess realisation was made by the producer or dealer to claim refund of such excess realisation from out of the amount credited to the Fund. Then there were other provisions in regard to the vesting of the Fund in the Central Government and its dissolution as also certain other incidental provisions.

3. It is clear on a plain natural construction of the language of Sub-section (3) of Section 3 that, save as otherwise provided in Sub-section (4) of that Section every producer must, in the case of excess realisation made before the commencement of the Act, within thirty days of such commencement, credit to the fund the amount representing such excess realisation together with interest at the rate

of 121/2% per annum from the date such amount was realised by him. Here, in the present case, excess realisations were made by the petitioners since they realised, on the sale of levy sugar, price in excess of the controlled price and it would seem prima facie that the excess realisations having been made before the commencement of the Act, the petitioners were bound under Sub-section (3) of Section 3 to credit to the Fund, within thirty days of the commencement of the Act, the amounts representing such excess realisations together with interest at the rate of 121/2% per annum, unless they fell within the saving provision enacted by the words '"Save as otherwise provided by Sub-section (4)". The petitioners of course did not dispute their liability to credit the amounts representing the excess realisations to the Fund, but their contention was that they were not liable to pay interest on such amounts at the rate of 121/2% per annum or at any other rate and in support of this contention, he relied on the provisions of Sub-sections (4) and (5) of Section 3. Now it is apparent that Sub-section (3) of Section 3 opens with the saving provision "Save as otherwise provided by Sub-section (4)" and hence Sub-section (4) carves out an exception from the general provision enacted in Sub-section (3). The result is that where, by virtue of any interim order made by any court, whether before or after the commencement of the Act, any excess realisations are collected & kept by a producer under the cover of any guarantee given in pursuance of such interim order, he is exonerated from the obligation to credit the amount of such excess realisations to the Fund so long as the court which passed the interim order does not so direct. The producer can then await the passing of an appropriate order by the court and when the court so directs, he would have to credit the amount representing the excess realisations to the Fund, but in such a case, there would be no obligation on him to pay interest at the rate of 121/2% per annum as provided in Sub-section (3) of Section 3. It is significant to note that, unlike Sub-section (3). Sub-section 4 of Section 3 does not provide for payment of interest on the amount of excess realisations required to be credited to the Fund. Of course, we make it clear that if the court so directs, the producer would have to pay interest on the amount of excess realisations at the rate specified by the court. Sub-section (5) of Section 3 proceeds to deal with a situation where an interim order referred to in Sub-section (4) has been made by a court and no direction for crediting the amount of excess realisations to the Fund has been given by the court until the final disposal of the proceeding and it says that, in such a case, the producer "shall, on the final disposal of the proceedings of the court aforesaid or in any court of appeal or revision, credit such amount, to the extent it represents any excess realisation, to the Fund". Now, it is true that, unlike Sub-section (4), Sub-section (5) is not specifically excepted out of Sub-section (3). but it is really a continuation or extension of Sub-section (4) and hence it must be construed as an exception to Sub-section (3) in the same manner as Sub-section (4). Where in pursuance of an interim order referred to in Sub-section (4), any excess realisations have been collected and kept by a producer under the cover of any guarantee, the producer is not bound to credit the amount of excess realisations to the Fund within the period specified in Sub-section (3), but he may credit the same to the Fund on the final disposal of the proceedings, There being no obligation on the producer to credit the amount of excess realisations to the Fund until the final disposal of the proceedings, Sub-section (5) obviously does not make him liable to pay interest at the rate of 12'/2% per annum from the date on which the excess amount was realised by him and does not contain any provision for payment of interest, unlike Sub-section (3) of Section 3. But, obviously, Sub-section (4) and (5) can operate only where an interim order made by a court is Subsisting at the date of commencement of the Act or is Subsequently made, because they carve an exception out of Sub-section (3) and relieve the producer from the obligation to credit the amount of

excess realisations to the Fund within the period specified in Sub-section (3) and postpone this obligation to the point of time when the court which has passed the interim order so directs or the proceedings before the court finally come to an end. These Sub-sections can have no application where an interim order made by a court has already come to an a end as a result of final disposal of the proceedings before the commencement of the Act. The producer would in such a case be liable under Sub-section (3), Clause (a) to credit to the Fund the amount of excess realisations made by him under the cover of a guarantee given in pursuance of the interim order, within thirty days from the date of commencement of the Act and this liability would carry with it an obligation to pay interest at the rate of 12'/2 % per annum as provided in that Sub-section. Here in the present cafe the excess realisations were no doubt collected and kept by the petitioners under the cover of guarantees given in pursuance of interim orders made by this Court, but the writ petitions in which the interim orders were made were finally disposed of on 6th November, 1972 long before the commencement of the Act. Hence the petitioners were not entitled to avail of the provisions of Sub-section (4) and (5) and they were governed by Sub-section (3) of Section 3 and in this view they were liable to credit to the Fund within thirty days from the commencement of the Act the amounts representing excess realisations made by them together with interest thereon at the rate of 12'/2% per annum from the date on which such amounts were realised by them.

4. The Bank guarantees given by the petitioners in the various writ petitions cannot, therefore, be discharged unless the amounts of excess realisations are credited by the petitioners to the Fund with interest thereon at the rate of 12'/2%per annum for the date on which such amounts were realised by them. So far as the applications, other than Civil Miscellaneous Petition No. 7190 of 1976, are concerned, the petitioners have requested us to grant them instalments for payment of the amounts of exces3 realisations to the Fund. We direct that so far as the petitioners in applications other than C.M.P. Nos. 9059 of 1973, 7457 of 1976, 8126 of 1972 and 7190 of 1976 are concerned, the amounts of excess realisations together with interest be paid by them to the credit of the Fund in three equal instalments; one on or before 1st January, 1978, the other on or before 1st January, 1979 and the third on or before 1st January, 1980 If the petitioners commit default in payment of any instalment on its due date, the whole of the amount of excess realisations together with interest or the balance thereof then remaining due shall become payable forthwith by the petitioners to the credit of the Fund. The bank guarantee given by the petitioners in C.M.P. No. 7279 of 1976 has already expired and they will, therefore, arrange for a bank guarantee to be given by PNB Finance Ltd. for payment of the amount of excess realisation together with interest in the manner aforesaid. The petitioners in C.M.P. No. 9059 of 1973 are willing that the amount due under the bank guarantee given by them may be paid off to the credit of the Fund and the bank guarantee may be discharged and a direction will according issue to that effect. So far as the balance of the amount of excess realisations together with interest in concerned, the petitioners will pay the same in two equal instalments, one on or before 1st January, 1978 and the other on or before 1st January, 1979 and they will give security for payment of the same to the satisfaction of the appropriate authority under the Act. If any default is committed by the petitioners in payment of any instalment on its due date, the whole amount or the balance thereof, as the case may be, shall become payable forthwith to the credit of the Fund. The petitioners in C.M.P. No. 7457 of 1976 are also willing that the amount due under the bank guarantee given by them may be paid to the credit of the Fund and the bank guarantee may be discharged and we accordingly so direct. The balance of the amount of excess realisations together

with interest, if any, will be paid by the petitioners within three months from today. So far as the petitioners in C.M.P. No. 8126 of 1972 are concerned, the amount of excess realisations together with interest shall be paid by them to the credit of the Fund in three equal instalments, one on or before 1st January, 1978, the other on or before 1st January, 1979 and the Third on or before 1st January, 1980 and in the meantime the bank guarantee given by them will continue and it will be renewed from time to time at least three months before each expiry date until the whole amount is paid off by the petitioners. If the petitioners default jn payment of any instalment on its due date, the whole amount or the balance thereof then remaining due will become payable forthwith to the credit of the Fund. The petitioners in C.M.P. No. 7190 of 1976 have already deposited a sum of Rs. 7,81,633.25 in respect of the excess realisations with the Chief Pay and Accounts Officer, Ministry of Agriculture. This amount would be treated as credited to the Fund on the date on which it was deposited by the petitioners with the Chief Pay & Accounts Officers. If there is any balance out of the amount of excess realisations which remains to be paid by the petitioners, the same will be paid by them in two equal instalments, one on or before 1st January, 1978 and the other on or before 1st January, 1979, with a default Clause in the same terms as in the case of other applications. We are hold that the petitioners in some of the applications have filed writ petitions challenging the constitutional validity of the Act and some of the writ petitions are pending in the Calcutta High Court, while in some others appeals are pending in this Court. This order will obviously be Subject to the final result of the writ petitions and appeals. There will be no order as to costs of these applications.