Supreme Court of India
Salar Jung Sugar Nulls Ltd. Etc vs State Of Mysore & Ors on 1 November, 1971
Equivalent citations: 1972 AIR 87, 1972 SCR (2) 228
Author: A Ray
Bench: Ray, A.N.

PETITIONER:
SALAR JUNG SUGAR NULLS LTD. ETC.

Vs.

RESPONDENT:
STATE OF MYSORE & ORS.

DATE OF JUDGMENT01/11/1971

BENCH:
RAY, A.N.
BENCH:
RAY, A.N.
MITTER, G.K.
ROY, SUBIMAL CHANDRA
PALEKAR, D.G.
SIKRI, S.M. (CJ)
SHELAT, J.M.
DUA, I.D.

CITATION:
1972 AIR 87 1972 SCR (2) 228
1970 SCC (2) 23
CITATOR INFO :
R 1976 SC2478 (12)
APR 1978 SC 449 (46,52)
F 1985 SC1199 (6)

ACT:
Mysore Sales Tax Act, 1957 as amended by Mysore Act 11 of 1961--Levy of purchase tax on sugarcane purchased by factories from growers--Purchase and supply of sugarcane regulated by Central and State Control Orders--Transactions whether amounted to sale within meaning of s. 2(f) of Mysore Sales Tax Act--Mutual assent between purchaser and seller whether Present--Factories whether dealer within meaning of s. 2(k) of Act--Different rates of tax In different States whether violative of Art. 14 of Constitution.

HEADNOTE:
By Mysore Act 11 of 1961 which came into force on October 1, 1961 sugarcane was included at Serial No. 11-A in the Third Schedule to the Mysore Sales Tax Act, 1957. As a result of

the amendment the appellants were subjected to levy of tax on purchase of sugarcane. Their writ petitions challenging the levy were dismissed by the High Court. In appeals by certificate the appellants contended before this Court that : (i) on account of the Central & State Control Orders applicable to the transactions there was no mutual assent by and between the appellants and the growers of sugarcane in regard to supply of sugarcane by the growers and the acceptance by the factories and therefore there was no purchase and sale of sugarcane-, (ii) the appellants were not dealers within the meaning of s. 2(k) of the Mysore Sales Tax Act; (iii) the levy of tax on purchase of sugarcane at different rates in different States was discriminatory and in violation of Art. 14.

HELD : (i) The decisions relating to 'compulsory sales' establish that statutory orders regulating the supply and distribution of goods by and between the parties under the Control Orders in a State do not absolutely impinge on the freedom to enter into contract. Legislative measures or statutory provisions fixing the price, delivery, supply, restricting areas for transactions are all within the realm of planning economic needs ensuring production and distribution of essential commodities and basic necessities of community. The recent trends in these legal rules delimit the variety of structure of rights and duties which individuals may create by such acts and transactions. The complexity of modern activities and the consequent difficulty of providing for every eventuality have shaken fervour for freedom of contract as there was during the nineteenth century. The economic environment has changed. The individual freedom is to be reconciled with adequate performance by the Government of its functions in a highly organised society. Delimiting areas for transactions or parties or denoting price for transaction are all within the area of individual freedom of contract with limited choice by reason of ensuring the greatest good for the greatest number by achieving proper supply at standard or fair prices to eliminate the evils of hoarding and scarcity on the one hand and availability on the other. [244 G-Z45 B]

In the present case the Control Orders are to be kept in the forefront for appreciating the true character of transactions. It is apparent that the area is restricted. The parties are' determined by the order. The

229

minimum price is fixed. The minimum quantity of supply is also regulated. These features do not complete the picture. The entire transaction indicates that the parties agree to buy and sell. The parties choose the terms. of delivery.. The parties have choice with regard to obtaining supply of a quantity higher than 95 per cent of the yield. The parties can stipulate for a price higher than the minimum. The parties can have terms for payment in advance as well in cash. A grower may not cultivate and there may not be any

yield. A factory may be closed or wound up and may not buy sugarcane. A factory can reject goods after inspection. Inspection and appropriation of goods, which in the present case were unascertained goods indicates not only freedom in the formation but also in the performance of contracts. The combination of all these factors indicates that the parties entered into agreement with mutual assent and with volition for transfer of goods in consideration of price. [248 B-E;, 247 B]

The transactions accordingly amounted to sales within the meaning of s. 2(t) of the Mysore Sales Tax Act.

Indian Steel & Wire Products Ltd. v. State of Madras [1968] 1 S.C.R. 479, Andhra Sugars Ltd. & Anr. v. State of Andhra Pradesh, [1968] 1 S.C.R. 706 and State of Rajasthan & Anr. v. M/s. Karam Chand Thappar & Bros. Ltd. [1969] 1 S.C.R. 861, relied on.

State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd. [1959] S.C.R. 379, M/s. New India Sugar Mills Ltd. v. Commissioner of Sales Tax, Bihar, [1969] Supp. 2 S.C.R. 459, M/s. Chitter Mal Narain Das v, Commissioner of Sales Tax, [1971] 1 S.C.R. 671, Newcastle Breweries Ltd. v. Inland Revenue Commissioners (1927) 96 L.J.K.B. 735, Kirkness (Inspector of Taxes) v John Hudson & Co. Ltd., [1955] A.696 and Ridge Nominees Ltd. v. Inland Revenue Commissioners [1962] Ch. 376, Considered.

(ii) If a person carries on the business of buying or selling a commodity it is not necessary that he shall sell the same commodity to become a dealer. The commodity may be converted into another saleable commodity or it may be used as an ingredient in the manufacture of a commodity. Therefore, the factories which bought sugarcane could be said' to carry on the business of buying and selling sugarcane and the factories were 'dealer' within the meaning of s. 2(k) of the Mysore Sales Tax Act, [249 C]

State of Andhra Pradesh v. Abdul Bakshi & Bros. A.I.R. 1965 S.C. 531, relied on.

(iii) It was not disputed that all the factories in Mysore had been treated equally. Different rates of purchase tax in different States are applicable on various grounds. The quantity available, the conditions of agriculturists, the number of factories will all have distinctive features. Therefore there could be no infraction of Art. 14 of the Constitution.[249 E]

(iv) In view of the decision of this Court in Tata Iron & Steel Co.'s case the appellants could not impeach the imposition and levy of sale tax on the ground that the appellants could not collect from the purchasers of sugar the purchase tax paid by the appellants on purchase of Sugarcane. [249 G-H]

Tata Iron & Steel Co. v. State of Bihar, [1958] S.C.R. 1355, applied.

230

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 2002 to 2005 and 2014 to 2017 of 1968.

Appeals from the judgment and order dated April 16, 1968 of the Mysore High Court in Writ Petitions Nos. 2225 of 1967, 29 to 31, of 1968, 2208 of 1967 and 32 to 34 of 1969 respectively.

G.Vasanta Pai, G. L. Sanghi, P. C. Bhartari, B. Datta, J. B. Dadachanji, O. C. Mathur and Ravinder Narain, for the appel- lants (in all the appeals).

V. S. Desai, S. S. Javali and R. B. A tar, for the respondents (in all the appeals).

The Judgment of the Court was delivered by Ray, J. These appeals are by certificate against the judgment and order dated 16 April, 1968 of the High Court of Mysore dismissing the applications of the appellants under Article 226 of the Constitution for writs, orders and directions prohibiting the respondent-State of Mysore and the Commissioner for Commercial Taxes at Bangalore from levying or taking proceedings to levy any purchase tax on purchase of sugarcane from the grower or from collecting or taking any proceedings for recovery of any such tax with or without penalty from the appellants. The appellants also asked for orders, writs and directions for refund of several sums of money collected as and for purchase tax. The appellants are the India Sugars and Refineries Ltd. and the Salar Jung Mills Ltd. The India Sugars and Refineries Ltd. is situated at Hospet in Bellary District in Mysore and the Salar Jung Sugar Mills Ltd. is situated at Munirabad in Raichur District in Mysore.

The appellant, the India Sugars and Refineries Ltd. in four applications now Civil Appeals No. 2015, 2016, 2017 and 2014 of 1968 impeached the demand and collection made against the appellant for large sums of money as and for purchase tax and penalty on the purchase of sugarcane from the growers for the period 1 April, 1962 to 30 June, 1967 and further asked for refund of large sum of money collected as purchase tax.

The appellant Salar Jung Sugar Mills Ltd. in four applications now Civil Appeals No. 2003, 2004, 2005, and 2002 of 1968 asked for similar orders and directions in respect of 'the period 1 July, 1963 to 30 June, 1967. In the fifties practically all the States in which sugarcane was grown for the purpose of manufacturing sugar used to levy cess on sugarcane brought into the premises of sugar factories. This Court in Diamond Sugar Mills v. State of U.P. (1) [1961] 3 S.C.R. 242 held that section 3 of the U.P. Sugarcane Cess Act, 1956 which empowered the Governor of the State to impose cess on entry of sugarcane into the premises of a factory did not fall within Entry 52 of List II and as there was no entry in the State List or in the Concurrent List in which the said Act could fall, it was beyond the legislative competence of the State Legislature. The decision of this Court was given on 13 December, 1960. The Sugarcane Cess (Validation) Act, 1961 was passed by Parliament validating the imposition of collection of cess on sugarcane under several State enactments before the commencement of the Validation Act of 1961, The Mysore State Legislature imposed tax on purchase of sugarcane purchased by sugar factories. By Mysore Act No. 11 of 1961 which came into

force on 1 October, 1961 sugarcane was included at Serial No. 11-A in the Third Schedule to the Mysore Sales Tax Act, 1957. The relevant provision in the Mysore Act is as follows "11-A Sugarcane--Purchased by the last dealer in the State liable to tax under this Act.-Fifteen per cent". As a result of the amendment the appellants were subjected to levy of tax on purchase of sugarcane.

The appellants raised three principal contentions. First, there was no mutual assent by and between the appellants and the growers of sugarcane in regard to supply of sugarcane by the growers and the acceptance by the factories and therefore there was no purchase and sale of sugarcane. Secondly, the appellants are not dealers within the meaning of section 2(k) of the Mysore Sales Tax Act. Third, the levy of tax on purchase of sugarcane at different rates in different States was discriminatory and in violation of Article 14.

In order to appreciate the rival contentions on the first ground as to whether there was a purchase or sale of sugarcane the relevant legislation has to be looked into and facts and circumstances have to be ascertained for finding out as to what the actual transaction was.

In exercise of the powers conferred by section 3 of the Essential Commodities Act, 1955 the Central Government on 27 August, 1955 made the Sugarcane Control Order, 1955. The Central Government was empowered by clause 3 of the Sugarcane Control Order, 1955 to fix the minimum price of sugarcane to be paid by purchasers of sugar. Sale or purchase of sugarcane at a price lower than the price fixed under section 3 was prohibit-

ed. The Central Government, however, could fix an additional price under certain circumstances and contingencies. Clause 4 of the Order of 1955 gave the Government power to prohibit or restrict or otherwise regulate export of sugarcane from any area for supply to different factories and also to direct that no jaggery or sugar shall be manufactured from sugarcane except under and in accordance with the conditions specified in a licence issued in that behalf. On 4 October, 1963 in exercise of the powers conferred by section 3 of the Defence of India Act, 1962 the Central Government introduced Rule 125-B to the Defence of India Rules. Rule 125-B inter alia stated that if the Central Government was of opinion that it was necessary or expedient for regulating or increasing the supply of sugarcane or for securing the equitable distribution of sugarcane the Central Government could pass orders to reserve areas where sugarcane was grown for a factory; determine the quantity of sugarcane which a factory would require for crushing during a year; fix with respect to any specified sugarcane grower in a reserved area the quantity or percentage of sugarcane grown by such grower for supply to the factory concerned; require a factory to enter into an agreement with the grower to purchase the quantity of sugarcane so determined; and further direct that no sugarcane shall be exported from a reserved area except under and in accordance with a permit issued by the Central Government.

On 26 September, 1963 sugar was notified under Rule 125-B of the Defence of India Rules as a thing essential to the life of the community. On 7 October, 1963 the Central Government directed that the powers conferred by Rule 125-B of the Defence of India Rules shall be exercised by the State Government.

In this background the Mysore Government on 14 November, 1963 in exercise of the powers conferred by Rule 125-B of the Defence of India Rules brought into existence the Mysore Sugarcane (Regulation of Supply) Order, 1963. In Schedule I of the Order factories were specified and reserved areas were enumerated in the said Schedule for supply of sugarcane to the specified factory and the sugarcane growers in the reserved areas were to supply 95 per cent of sugarcane grown to the factory concerned. Every factory to which supply of sugarcane was to be made was required to enter into an agreement with each sugarcane _grower to purchase the quantity of sugarcane determined. Purchase of sugarcane by power crusher or for manufacture of gur, shakkar, gul, jaggery, rab or khandsari sugar was prohibited. Export of sugarcane from a reserved area was also prohibited except under permit. Contravention of the Mysore Sugarcane Control Order was made punishable by forfeiture of property in respect of which there was a contravention. The Mysore Sugarcane Control Order, 1963 specified the India Sugars and Refineries Ltd. as the factory and enumerated the areas reserved for supply of sugarcane to the specified factory. It may be stated here that the Salar Jung Sugar Mills Ltd. was also specified in the Schedule and it remained specified until 1965 when the Mysore Sugarcane Munirabad Order, 1965 was made as specially applicable to Salar Jung Sugar Mills Ltd. On 14 February, 1964 in exercise of the powers conferred by section 3 of the Essential Commodities Act, the Central Government amended the Sugarcane Control Order, 1955. Clause 4 of the Sugarcane Control Order, 1955 was amended and substituted by a new clause. The new clause 4 conferred powers on the Central Government to reserve areas where sugarcane was grown for a factory, determine the quantity of sugarcane which the factory would require for crushing during the year, fix with respect to any specified sugarcane grower in a reserved area the quantity or percentage of sugarcane grown by such grower which such grower would supply to the factory concerned; require the sugarcane grower and the factory to enter into an agreement for supply and purchase of the quantity of sugarcane so determined. Clause 4 as amended further provided that every sugarcane grower or factory to whom the order applied would be bound to supply or purchase the quantity of sugar covered by the agreement entered into and wilful failure on the part of anyone would constitute a breach of the provisions of the said Order.

On 20 February, 1964 in exercise of the powers conferred by clause 6 of the Sugarcane (Control) Order, 1955, the Central Government directed that the powers conferred on the Central Government by clause 4 of the said Order, shall be exercisable by the State Governments of Andhra Pradesh, Assam, Bihar, Gujarat, Kerala, Madhya Pradesh, Madras, Maharashtra, Mysore, Orissa, Punjab, Rajasthan, Uttar Pradesh and West Bengal and the Chief Commissioner of Pondicherry.

On 15 January, 1965 the Mysore Government in exercise of the Powers conferred by clause 4 of the Sugarcane Control Order, 1955 as amended and read with the notification dated 20 February, 1964 made the Mysore Sugarcane (Regulation of Supply) (Munirabad) Order, 1965. The Mysore Sugarcane (Munirabad) Order of 1965 in clause 2(c) defined factory to mean the premises of the appellant Salar Jung Sugar Mills Ltd. at Munirabad. In Schedule I of the Mysore Sugarcane (Regulation of Supply) (Munira-

bad) Order, 1965 the area reserved for supply of sugarcane to the factory was enumerated setting out the names of the villages. The Mysore Sugarcane Order, 1955 determined the crushing capacity of the appellant Salar Jung Sugar Mills Ltd. to be 1000 tons per day and the quantity of sugarcane

required by the factory during the crushing season to be 1,50,000 tons. The Order further stated that the factory was to secure the quantity of sugarcane from the area specified in Schedule I and the quantity of sugarcane to be, supplied by each grower was fixed at 95 per cent of the sugarcane grown by the grower. Every sugarcane grower and the factory' concerned were required to enter into an agreement to supply or purchase the quantity of sugarcane determined under clause 4. Export of sugarcane from reserved area was prohibited. The Sugarcane (Regulation of Supply) Order, 1963 in so far as it related to matters provided for in the Mysore Sugarcane (Munirabad) Order, 1965 was repealed. Thereafter, the Mysore Sugarcane (Regulation of Supply) Order, 1963 applied to the India Sugar and Refineries Ltd. and the Mysore Sugarcane (Regulation of Supply) (Munirabad) Order, 1965 applied to the Salar Jung. Sugar Mills Ltd.

On 16 July, 1966 in exercise of the powers conferred by section 3 of the Essential Commodities Act, 1955 the Central Government made the Sugarcane (Control) Order, 1966 and repealed the Sugarcane (Control) Order, 1955. Under the Sugarcane (Control) Order, 1966 'factory' means any premises including the precincts thereof in any part of which sugar is manufactured by vacuum pan process, 'price' means the price or the minimum price fixed by the Central Government from time to time delivered at the gate of the factory or sugarcane purchasing centre and reserved area' means any area where sugarcane is grown and reserved for a factory in terms of the Order. Clause 3 of the 1966 Sugarcane Control Order dealt with minimum price of sugarcane fixed by the Central Government having regard to (a) cost of, production of sugarcane, (b) the return to the grower from alternative crops on the general trend of prices of agricultural commo- dities, (c) availability of sugar to the consumer at a fair price, (d) the price at which sugar produced from sugarcane is sold by producers' of sugar, and (e) the recovery of sugar from- sugarcane. Purchase and sale of sugarcane at a price lower than that fixed was prohibited. The price of sugarcane became-payable 14 days from the date of delivery. Additional price for sugarcane could also be fixed under clause 5. Under clause 6 of the Order the Central Government could reserve area where sugarcane is grown for the factory having regard to the crushing capacity of the-, factory, the availability of sugarcane in the reserved area and the need for production of sugar and also determine the quantity of sugarcane required by the factory for crushing during any year and fix the quantity to be supplied by a grower to the factory. The grower and the factory were required to enter into an agreement for supply or purchase of sugarcane. Export of sugarcane from any reserved area was prohibited. In exercise of the powers conferred by clause 6 of the Sugarcane (Control) Order, 1966 the Mysore Sugarcane (Regulation of Distribution) (Munirabad) Order, 1966 was made by the Government of Mysore repealing the Mysore Sugarcane (Regulation of Supply) (Munirabad) Order, 1965. The 1966 Sugarcane (Munirabad) Order was in relation to the appellants Salar Jung Sugar Mills Ltd. Clause 3 of the Order dealt with the crushing capacity of the factory being 1000 tons per day and the quantity of sugarcane required for the factory during the year was determined to be 1,50,000 tons. The appellant's factory was to secure the quantity of sugarcane determined under clause 3(2) from the areas specified in Schedule I being the reserved areas for supply of sugarcane to the factory. The sugarcane growers in the reserved area were to supply 95 per cent of the sugarcane grown by them to the factory. The sugarcane grower and the factory were required to enter into an agreement for supply and purchase of sugarcane.

Counsel on behalf of the appellants contended that there was no sale and purchase of sugarcane by reason of want of mutual assent and further that the entire transaction was only by operation of statutes, and at no stage there was any element of freedom to buy or sell. It was said that under the statutes these consequences emerged. First, the price was fixed. Secondly, the sugarcane grower was required to deliver sugarcane and the factory was required to receive supply only from the sugarcane grower in the reserved area. Thirdly, the quantity of supply by the sugarcane grower, namely, 95 per cent of the produce was fixed. Fourthly, the quantity of sugarcane required by the factory was fixed at 1,50,000 tons a year. Fifthly, the grower in the reserved area could not export sugarcane to any place or person outside the area. Sixthly, it was said that entering into agreement between the grower and the factory for supply and purchase of sugarcane was under the statute. Counsel for the State on the other hand contended that the transaction was in essence and substance purchase and sale and there was mutual assent between the parties as to the transactions. It was said that a grower after he had grown sugarcane at the commencement of the cultivation season might bargain for a price higher than the minimum price. Again, if the factory did not L500Sup.CI/72 agree to pay higher price the grower might not elect to grow sugarcane or even allow his land to lie fallow. The factory might agree to pay a price higher than the minimum price in order to provide sufficient inducement to growers for higher yield. Strong reliance was placed by counsel for the State on the agreement entered into between the growers and the factory as decisive of purchase and sale. As to the agreement it was said on behalf of the State that to ensure a well phased supply of sugarcane to the factory the latter might enter into an agreement with the growers even before they would plant sugarcane. The dates of delivery were to be agreed upon between the parties. The growers according to the State might ask for advance payment of price in cash or in the form of seedlings, fertilisers and the like. Factories could ask for more than 95 per cent of the yield. At all relevant times sugarcane was declared to be an essential commodity. The various orders were made for regulating the supply of sugarcane to the factories having regard to the crushing capacity of the factory, the availability of sugarcane in the area and the need for production of sugarcane. This co-ordination between production and distribution of sugarcane on the one hand and production and distribution of sugar on the other hung toge- ther as complementary to each other in regard to the requirements of basic ingredient. The carving out of areas for production and distribution of sugarcane is necessary to preserve continuity of supply and to prevent shortage and defective distribution. The regulation of supply of sugarcane by fixing the minimum price is an application of the principle of utilitarianism which receives the approbation and goodwill of both the grower and the factory so that the grower is assured of an economic competitive return and the factory is also assured of not being scared by soaring and fluctuating price to thwart and impede production and manufacture of sugar.

Counsel for the appellants extracted the famous dictum of Sir Henry Maine and submitted that the orders in the present case were retrograde step and the clock was put back by reversing the historical evolution from status to contract. What was emphasized by counsel for the appellants was as follows : The various Orders had the effect of bringing into existence the status of delivery by the growers and acceptance by the factory of sugarcane as a result of the statutory orders and there was no area of bargain. There was no element of will. There was no aspect of assent. The entire transaction was nothing but a regimentation of pattern of automatic supply and acceptance. The grower was bound to deliver. The factory was bound to accept. Neither party could move out of the

apron strings of the statutes.

This Court in State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd. [1959] S.C.R. 379 in dealing with the assessment of Gannon Dunkerley & Co. to sales tax on the value of the materials used in the execution of building contracts within the taxable turnover of the company held that the building contract was one entire and indivisible transaction and there was no separate individual sale of the building materials comprised in the construction. It was said by this Court that in a building contract the agreement between the parties was that the contractor should construct the building according to the specifications contained in the agreement ,and in consideration therefor receive payment as provided therein, and in such an agreement there was ,neither a contract to sell the materials used in the construction nor did the property pass therein as movable. The reason why counsel for the appellants relied on the decision in Gannon Dunkerley & Co. was in support of the proposition that the word 'sale' occurring in Entry 54 in List II was to be interpreted in the sense in which the word 'sale' is used in the Indian Sale of Goods Act. This Court in Gannon Dunkerley & Co. referred to the meaning of the word 'sale' in various treatises like Blackstone's Commentary, Ben amin on Sale, Halsbury's Laws of England and held relying on the meaning given by Benjamin on Sale that the four elements required in a sale were; first, that the parties must 'be competent to contract; secondly, there should be mutual assent; thirdly, property in the thing is to be transferred; and, fourthly, the price in money is to be paid. Counsel for the appellants contended that the element of mutual assent was lacking in the present cases. In M/s New India Sugar Mills Ltd. v. The Commissioner of Sales Tax, Bihar [1963] Suppl. 2 S.C.R. 459 a question arose as to whether the despatches of sugar to the Province of Madras by dealers in accordance with the directions issued by the Controller under the Sugar and Sugar Products Control Order, 1946 was liable to be taxed as a sale. This Court in the majority opinion held that the despatches of sugar under the directions of the Controller were not the result of any contract of sale because there was no offer by the dealers to the State and no acceptance by the State. The dealer was held to be compelled to carry out the directions of the Controller and there was no volition. Intimation by the State of its requirement of sugar to the Controller or communication of the allotment order to the dealer assessee was held not to amount to an offer. The minority view in that case was that there was a sale of sugar and consent could be express or implied and as long as the parties carried on trade under controls at fixed price they must be deemed to have agreed to such a price; there must be an amplied contract with an implied offer and an implied acceptance. The decision of this Court in the case of Gannon Dunkerley & Co. (supra) was referred to in the New India Sugar Mills (supra) case for the meaning of the word 'sale). The majority view in the case of New India Sugar Mills Ltd. was on the reasoning that the prerequisite to a sale was a contract of sale which was to be had between the parties. The Province of Madras intimated its requirements to the Controller. The Controller called upon the manufacturing units to supply sugar to the Province. It was held that the Controller did not act as an a,-lent of the Province to purchase goods but that he acted in exercise of his statutory authority. Therefore, there was no offer by the Province to purchase sugar and there was no acceptance of offer by the manufacturer. The ratio was that there was no privity between the manufacturer and the Province. The minority view in that case was that there might be compulsion in both buying and selling but a compelled sale might nevertheless be a sale. Hidayatullah, J. for the minority view said "the affairs of the world are very complicated and sales are not always in their elementary forms. Due to short supply or maldistribution of goods, controls have to be imposed. There are permits, price controls,

rationing and shops which are licensed. Can it be said that there was no sale because mutuality is lost on one account or another ? It was not said in the case of Tata Iron and Steel Co. Ltd. v. The State of Bihar [1958] S.C.R. 1355 which was a case of control, that there was no sale. The entry should be interpreted in a liberal spirit and not cut down by narrow technical considerations. The entry in other words should not be shorn of all its content to leave a mere husk of legislative power. For the purposes of legislation such as on sales lax it is only necessary to see whether there, is a sale express or implied. Such a sale was not found in forward contracts and in respect of materials used in building contracts. I am of opinion that in these transactions there was a sale of sugar for a price and the tax was payable".

Could a company which supplied steel products to various persons in the State of Madras at the instance of the Steel Controller exercising powers under the Iron and Steel (Control) of Production and Distribution Order, 1941 be assessed to sales tax oil those transactions. This was the question in. Indian Steel & Wire Products Ltd. v. State of Madras [1968] 1 S.C.R. 479. Clause 5 of the Order in the Madras case stated that "no producer or stockholder shall dispose of or agree to dispose of or export or agree to export from British India any iron or steel except in accordance with the conditions contained or incorporated in a general or special written order of the Controller". Clause 10-B of the Order stated that "the Controller may, by a written order require any person holding stock of iron and steel, acquired by him otherwise than in accordance with the provisions of Clause 4 to sell the whole or any part of the stock to such person or class of persons and on such terms and conditions as may be specified in the Order". Clause 4 of the Order dealt with acquisition and stated that "no person shall acquire or agree to acquire any iron or steel from a producer or a stockholder except under the authority of and in accordance with the conditions contained or incorporated in a general or special written order of the Controller". The company contended that the parties to whom the goods were to be supplied, the price which was to be paid, the manner in which goods were to be transported and the mode in which payment was to be made were all determined by the Controller and therefore the transfers were not sales because of compulsion and lack of agreement. Hegde, J. speaking for the Court referred to the observations in Cheshire and Fifoot Law of Contract (6th Ed.) at p. 22 and said "Law invariably imposed some restrictions on freedom of contract' But due to change in political outlook and as a result of economic compulsions, the freedom of contract is now being confined gradually to narrower and narrower limits. It would be incorrect to contend that because law imposes some restrictions on freedom to contract, there is no contract at all. So long as mutual assent is not completely excluded in any dealing, in law it is a contract". The transactions were held to be sales because the date for supply of goods', the time for payment and the independent arrangement between the parties for transport predicated the basis of mutual assent.

The Andhra Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1961 came up for consideration before this Court in Andhra Sugars Ltd. & Anr. etc. v. State of Andhra Pradesh & Ors. [1968] 1 S.C.R. 706. A sugar factory had to buy sugarcane from canegrowers in conformity with the directions of the Cane commissioner. The State Government by notification had power to tax purchases of sugarcane for use, consumption or sale in a sugar factory. The sugar factories challenged the validity of the Act empowering the Government to tax purchases of sugarcane in those instances because the factories were compelled to buy cane from the sugarcane growers and they were bound to enter into agreements in prescribed terms and conditions and to buy sugarcane

in conformity with instructions issued by the Cane Commissioner under the Act and areas were declared as the factory zone for supply of cane to a factory, the factory was bound to purchase quantity of cane grown in that area and offered for sale as might be determined by the Cane Commissioner, the cane growers were prohibited from supplying or selling cane to any factory or person otherwise than in accordance with the provisions of the Schedule. This Court on reading the provisions of the Act and the Rules framed thereunder found that a cane-grower in a factory zone was free to sell or not to sell his sugarcane to the factory. The contention of the factories was that if the grower offered to sell the factory was bound to enter into agreement on prescribed terms and conditions and therefore the factories were compelled by law to buy cane from the growers and the purchases were not made under agreements. Bachawat, J. speaking for the Court in the Andhra Sugars case said that the decision in the New India Sugar Mills Ltd. was not to be treated as an authority for the proposition that there can be no contract of sale under compulsion of a statute. The offer of a cane grower to sell was a free consent and the compulsion of law was not coercion as defined in section 15 of the Indian Contract Act, 1892. The agreement in spite of the compulsion of law was said to 'be neither void nor voidable. A canegrower made an offer directly to the factories. The factory accepted it. The parties signed an agreement. There was privity of contract between the parties. It was therefore a contract of sale and purchase though the buyer was obliged to give his assent under compulsion of a statute. In the case of Andhra Sugars Ltd. this Court referred to the whittling down of the laissez faire concept in a social Welfare State by emphasising the public interest to control unfair competition and combination. It was said "The cane growers scattered in the villages had no real bargaining power. The factory owners or their combines enjoyed a near monopoly of buying and could dictate their own terms. In this unequal contest between the canegrowers and the factory owners, the law stepped in. and compelled the factory to enter into contracts of purchase of cane offered by the canegrowers on prescribed terms and conditions". The Colliery Control Order, 1945 empowered the Central Government to fix price at which coal might be sold by colliery owners. The colliery owners were prohibited from selling or agreeing to sell or offering to sell coal at a price different from the price fixed in that behalf. Where a colliery owner signified to the Deputy Coal Controller (Distribution) in writing his willingness to sell direct to consumers and an allotment was made by the Deputy Controller to a consumer for such direct sale, the coal was to be delivered to the consumer at the price fixed under clause 4 of the Order. The Central Government was authorised to issue from time to time such directions as it thought fit to any colliery owner regulating the disposal of his stocks of coal or of the expected output of coal in the colliery during any period including directions as to the grade, size and quantity of coal which might be disposed of and persons or class or description of persons to whom coal should or should not be disposed of. The order further provided that no person shall acquire or purchase any coal from a colliery, and no colliery owner or his agent shall despatch or agree to despatch or transport any coal from the colliery except under the authority and in accordance with the conditions contained in a general or special authority of the Central Government. The Colliery Coal Control Order 1945 came up for considera- tion in State of Rajasthan & Anr. v. M/s. Karam Chand Thappar & Bros. Ltd. [1969] 1 S.C.R. 861. Under a contract with Equitable Coal Company, Karam Chand Thappar and Bros. Ltd. acquired the monopoly right to supply coal on behalf of the collieries in Rajasthan and sold as the agent of the Equitable Coal Company. Karam Chand Thappar and Bros. entered into an agreement with the State of Rajasthan to supply coal to the Rajasthan Government. The company contended that the supply of coal to the State of Rajasthan did not constitute sale as

the supply was controlled by the Colliery Control Order, 1945 and even if there was a sale it would be inter-State sale. It was held that the Colliery Control Order super-imposed upon the agreement between the parties the rate fixed and the elements necessary to render turnover from sale of goods liable to sales tax, namely, competency of parties, mutual assent of the parties, passing of property in the goods supplied to the purchaser and payment or promise of payment of price were present in the transaction. In the Rajasthan case it was noticed that when the goods supply of which is controlled by statutory orders are delivered pursuant to contract of sale the principle of die decision in the case of New, India Sugar Mills Ltd. has no application. Shah, J. speaking for the Court in the Rajasthan case said that there was an agreement of sale between the parties competent to contract and in pursuance of the agreement of sale property in the goods supplied passed to the purchaser for price.agreed to be paid. The transaction was, therefore, one of sale of goods within the meaning of the Rajasthan Sales Tax Act.

The U.P. Wheat Procurement (Levy) Order, 1959 was made for maintaining and securing equitable distribution and availability of wheat at fair prices. By clause 3 (1) of the Order 'every licensed dealer shall sell to the State Government at the controlled prices 50 per cent of the wheat held in stock by him at the commencement of this Order'. Again by clause 3(2) licensed dealer 'is directed to sell to the State Government 50 per cent of wheat purchased by him every day with the date of the commencement of this Order and until such time as the State Government otherwise directs'. The Order enjoins the licensed dealer to deliver the quantities specified in sub-clause (1) of clause 3 either to the Controller c. to such other person as may be authorised by the Controller to take delivery on his behalf. The Enforcement Officer had power to find out whether the dealer was carrying out the obligation. The U.P. Wheat Procurement Order was challenged in M/s. Chitter Mal Narain Das v. Commissioner of Sales Tax [1971] 1 S.C.R. 671 on the ground that there was no contract between the licensed dealer and the State pursuant to which goods were sold within the meaning of the U.P. Sales Tax Act. It was held that the obligation to deliver wheat arose out of the statute and there was no volition of the licensed dealer. The source of the obligations to deliver the goods and pay for them was said to be not in consensus 'but in the statutory order. It was said that the order did not 'envisage any consensual agreement' and it did 'not require the State to enter into even an informal agreement'. It was said 'On the date of the commencement of the U.P. Wheat Procurement (Levy) Order, upon the licensed dealer was imposed a liability to deliver half the quantity of wheat on hand, and he had also to supply to the State Governmeat 50 per cent of the quantity of wheat procured or purchased by him every day beginning with the date of commencement of the Order. If he failed to carry out the obligation he was liable to be penalised. To ensure that he carried out his obligation his premises were liable to be searched and his property sequestered (sic.) The Order ignored the volition of the dealer'. The meaning of the word 'compulsory sale' came up for consi- deration in three English decisions. These are Newcastle Breweries Ltd. v. Inland Revenue Commissioner [1927] 96 L.J.K.B. 735 and also reported in 43 T.L.R. 476, Kirkness (Inspector of Taxes) v. John Hudson & Co. Ltd. [1955] A.C. 696 and Ridge Nominees Ltd. v. Inland Revenue Commissioners [1962] Ch. 376.

In Newcastle Breweries Ltd. (supra) the question was whether a sum awarded to the company by way of compensation for a quantity of rum requisitioned by the Admirality under the Defence of the Realm Regulations was a profit arising from its trade or business. The company contended that it

was not, because the compensation represented the compulsory taking by the Crown of a part of the capital of the company, and, therefore, the compensation was not a profit from the business. It was held by Rowlatt, J., the Court of Appeal and the House of Lords that the cost of the rum was treated as an outgoing of the business and if raw rum had been voluntarily sold the price would have come into computation of profits and the circumstance that the sale was compulsory made no difference.

In the case of John Hudson & Co. Ltd. the wagons owned by the company were on 1 January, 1948 under requisition by the Minister of Transport under the powers contained in Regula-

tion 53 of the Defence Regulations 1939. On the same day the property in these wagons was vested in the British Transport Corporation by virtue of section 29 of the Transport Act, 1947. Section 30 of the Transport Act provided compensation to the owner of the wagons. The amount of compensation determined in accordance with the provisions of the Transport Act was substantially higher than the. written down value of the wagons for the purposes of income-,tax allowances in respect of wear and tear as appearing in the company's books. On these facts a balancing charge under section 17 of the English Income Tax Act, 1945 was made on the company. The amount represented the excess of the original cost over the written down value. The company appealed against the balancing charge to the Commissioners for the special purposes of the Income-tax Act who determined the question in favour of the Crown. Upjohn, J. reversed their determination. The Court of Appeal and the House of Lords upheld his decision.

The decisions in the case of John Hudson & Co. Ltd. turned on the meaning of the provisions of sction 17 of the English Income-tax Act, 1945 as to whether the company's wagons were sold within the meaning of that section. Viscount Simonds, L.C. said that the wagons were not sold and it would be a rave misuse of language to say that they were sold. Under the English Lands Clauses Consolidation Act, 1845 central or local authorities have powers of compulsory acquisition and these powers are commonly referred to as powers of compulsory purchase and the transaction is sometimes referred to as a compulsory sale. The word sale' in the English Income-tax Act without some context to aid the inclusion of compulsory sale within the meaning of the word 'sale' in the Income-tax Act was hold not to apply to include a case of compulsory acquisition. The operation of the Transport Act in that case was held to be different from that of the Lands Clauses Consolidation Act, 1845, because the Transport Act did not have the elements which in some degree assimilate a compulsory sale to a sale simpliciter. These compulsory sales under the English Lands Clauses Consolidation Act place the parties in a position to negotiate and apart from the power of compulsion in the background they were like an ordinary vendor and purchaser. The consensus between vendor and purchaser which is involved in the natural meaning of the word 'sale' came up for consideration in the recent decision of the Court of Appeal in the case of Ridge Nominees Ltd. Ridge Securities made an offer to purchase from the stockholders of another company Gresham the whole of the stock of that company. The offer was conditional upon acceptance before a certain date. A document of transfer of 440 shares in Gresham was made by Mrs. Rita Bell in consideration of pound 891 paid by Ridge. The question was whether the document was properly described as a conveyance or transfer on sale of any property within the meaning of the English Stamp Act, 1891. Section 209 of the English Companies Act, 1948 conferred power on an agent to execute an instrument of transfer on a dissenting shareholder's behalf. The offer made by Ridge Company to

purchase shares in Gresham company was conditional upon acceptance by the holders of not less than 90 per cent of the issued capital of Gresham. In fact, more than 90 per cent in value did accept the offer. Mrs. Rita Bell was one of those who did not think it fit to accept it. Thereupon Ridge Company invoked powers and provisions of section 209 of the English Companies Act. The transfer of the shares of Mrs. Bell was not executed by her but pursuant to the powers given by section 209 of the English Companies Act by some one on her behalf. Mrs. Bell was not an assenting but a dissenting shareholder. Her shares were transferred by virtue of the powers given to the transferee company by the Act. It is in that context that the question was whether the conveyance or transfer was sale of any property. The contention was that there could not be a sale because the essential element of mutual assent was absent. The Court of Appeal held that the instrument must be regarded as a transfer of sale. Lord Evershed, M.R. said that by the machinery created by the Companies Act and the statutory authority given by the Act to the agent to execute transfer on Mrs. Bell's behalf 'it has in truth brought into being that which ex facie in all its essential charac- teristics and effect is, and becomes, a transfer on sale of Mrs. Bell's stock. Danckwerts, L.J. in the same case said about the transfer of shares. "It seems to me that a sale may not always require the consensual element mentioned in Benjamin on Sale. 8th ed. p. 2, and that there may, in truth, be a compulsory sale of property with which the owner is compelled to part for a price against his will. The effect of the statute in such a case is to say that the absence of the transferor's consent does not matter and the sale is to proceed without it".

These decisions establish that statutory orders regulating the supply and distribution of goods by and between the parties under Control Orders in a State do not absolutely impinge on the freedom to enter into contract. Legislative measures or statutory provisions fixing the price, delivery, supply, restricting areas for transactions are all within the realm of planning economic needs ensuring production and distribution of essential commodities and basic necessities of community. The recent trends in these legal rules delmit the variety of structure of rights and duties which individuals may create by such acts and transactions. The complexity of modern activities and the consequent difficulty of providing for every eventuality have shaken fervour for freedom of contract as there was during the nineteenth century. The economic environment has changed. The individual freedom is to be reconciled with adequate performance by the Government of its functions in a highly organised society. Delimiting areas for transactions or parties or denoting price for transactions are all within the area of individual freedom of contract with. limited choice by reason of ensuring the greatest good for the greatest number by achieving proper supply at standard or fair price to eliminate the evils of hoarding and scarcity on the one band and availability on the other. In the present case, the parties are certain. The parties are defined, namely, that the sugarcane grower is delivering and supplying and the factory is accepting the goods. The property in the goods is transferred from the grower to the factory. The transaction is not a gift nor an exchange nor a hypothecation nor a loan. There is consideration for the transfer. Counsel for the appellants contended that there was no mutual assent because the price was fixed, the quantity for supply and delivery was determined, the parties had no choice to go to strangers or outsiders in the open market. In Benjamin on Sale, 8th Ed. at page 68 the law as to mutual assent is stated as this. "The assent need not as a general rule be express. It may be implied from their language or from their conduct; may be signified by a nod or a gesture, or may even be inferred from silence in certain cases; as if a customer takes up wares off a tradesman's counter and carried them away and nothing

is said on other side, the law presumes an agreement of sale for the reasonable worth of the goods. But the assent must in order to constitute a valid contract, be mutual and intended to bind both sides. It must also co-exist on the same moment of time". The assent must be mutual and bind both sides. The proposal by one man must be accepted by another and this acceptance must be unconditional. The assent must be communicated to the other party or some act must be done which the other party has expressly or impliedly offered to treat as a communication. Judged by these standards in the forefront exists the agreement between the parties in the present case. The statutory orders required parties to enter into agreement. The parties did in fact enter into agreements. The agreement contains intrinsic evidence that the growers agreed to sell and the factory to buy goods. Counsel for the appellants contended that mutual assent in the present case would not be free but compulsory and the parties would have no choice in the matter and therefore there would be no sale. The most common place illustration of supply and acceptance of goods resulting in sale under the present conditions.

is furnished by the present system of sale of rationed goods. There are ration shops in particular areas. Ration cards are distributed to residents in that area. The owners of these cards are required to go to the particular shop mentioned in the card for supply of rationed articles. Price is also regulated by the Rationing Order. Therefore the parties, the price, the shop, the supply and the acceptance of goods in accordance with the provisions of the Rationing Order are all regulated. When one presents a ration card to the shop and the shop owner delivers the rationed articles and the holder of the ration card accepts them and pays the price, there is indisputably a sale. Counsel for the appellants said that choice was left with the ration card holder to co to the shop or not to go there at all but the parties had no choice in the present case whether the factory would or would not enter into agreement. In the present case both the factory and the sugarcane rower have some choice in the matter. The factory owner and the grower might not have occasion to enter into agreements at all. The factory may be closed. The grower may not grow sugarcane. The rower might not tender the goods. The factory owners might not accept delivery. The choice of the parties is there as in ordinary sales. The position of the factory owner vis-a-vis the sugarcane grower is either that factory will be shut and closed down or the factory will have to be kept running and for that supply will have to be taken from the sugarcane growers. This may be comparable to undertaking a journey by rail or air with no choice as to the medium.

The agreement between the factory owner and the sugarcane ,,rower furnishes the guide to ascertain the real character of the transaction between the parties. These are the features. The factory agrees to buy. The grower agrees to sell. It is true that 95 per cent of the sugarcane will be sold. The parties have the choice to increase the quantity above 95 per cent. The quantity to he brought and sold is cultivated or to be cultivated by the grower. The delivery is to be at the factory. Delivery will be in such lots, on such dates and at such time as shall be agreed upon. The mode of delivery may also be within the scope of agreement. The price will be the controlled price. The grower can bargain for higher price. The sugarcane grower can ask for payment in advance. Payment may be in cash or in kind. The sugarcane will be accepted after inspection. There is scope for rejection of goods. Various columns in the agreement indicate the villages where sugarcane is to be cultivated, the names of the varieties of sugarcane to be cultivated. The last two columns are estimated quantity offered to be delivered and the period of delivery. All these features indicate, with unerring accuracy that there is

offer, inspection, and appropriation of goods to the con-

tract. The goods will be accepted by the factory after inspections and price will be paid on delivery. The mutual assent is not only implicit but is also explicit. Another feature in the agreements in the present case is that the goods are unascertained. The agreements speak of inspection of goods. Inspection and appropriation of unascertained goods indicates not only freedom in the formation but also in the performance Of contracts. Unascertained goods are distinct from specific or ascertained goods in the sense that future goods include goods not yet in existence or goods in existence but not yet acquired by the seller. It is safe to say that future goods for purposes of passing of property can never be specific. Future goods if and when sufficiently identified might be specific goods. Unascertained goods are not defined by the Sale of Goods Act but they fall into three main categories. First, goods to be manufactured or grown by the seller which are necessarily future goods. Second, generic goods. for example, 100 tons of sugarcane or the like which must also be future goods where the seller does not own sufficient goods of the description in question to appropriate to the contract. The third category is an unidentified part of a specific whole, for example 1000 tons of sugarcane out of a particular lot of 5000 tons of sugarcane. In the present case, sugarcane was to be grown by the grower. Delivery was to be made thereafter. The goods were to be inspected and then paid for. Therefore, in the present case, it would be a sale of unascertained goods. Under section 23 of the Indian Sale of Goods Act when there is a contract of sale of unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained. Then again. under section 23 of the Indian Sale of Goods Act where there is a contract for the sale of unascertained or future goods by description when the goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the seller, the property in the goods thereupon passes to the buyer. It is this unconditional appropriation which will pass the property. Again, under section 23 of the Indian Sale of Goods Act where the seller delivers the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer and does not reserve the right of disposal he is deemed to have unconditionally appropriated the goods to the contract. Therefore, in the present case the goods were to be ascertained by identification, delivery, inspection and unconditional appropriation.

These foregoing features indicate that the transaction in the present case constituted sale within the meaning of sale in section 2(t) of the Mysore Sales Tax Act, 1957. Sale is defined in section 2(t) as follows "sale' with all its grammatical variations and cognate expressions means every transfer of the property in goods by one person to another in the course of trade or business for cash or for deferred payment or other valuable consideration, but does not include a mortgage, hypothecation, charge or pledge". The Control Orders are to be kept in the forefront for appreciating the true character of transactions. It is apparent that the area is restricted. The parties are determined by the order. The minimum price is fixed. The minimum quantity of supply is also regulated. These features do not complete the picture.' The entire transaction indicates that the parties agree to buy and sell. The parties choose the terms of delivery. The parties have choice with regard to obtaining supply of a quantity higher than 95 per cent of the yield. The parties can stipulate for a price higher than the minimum. The parties can have terms for payment in advance as well as in cash. A grower may not cultivate and there may not be any yield. A factory may be closed or wound up and may not buy sugarcane. A factory can reject goods after inspection. The combination of all these features

indicates that the parties entered into agreement with mutual assent and with volition for transfer of goods in consideration of price. Transactions of purchase and sale may be regulated by schemes and may be liable to restrictions as to the manner or mode of sale. Such restrictions may become necessary by reason of co-ordination between production and distribution in planning the economy of the country. The contention of the appellants fails. The transactions amount to sales within the meaning of the Mysore Sales Tax Act. The second contention on behalf of the appellants was that the factories were not dealers within the meaning of the Mysore Sales tax Act. Dealer is defined in section 2(k) of the Mysore Sales Tax Act of 1957 as follows :- " 'Dealer" means any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash or for deferred payment or for commission remuneration or other valuable consideration and includes :-

(i) .....

(ii) .....

(iii).....

(iv) .....

(v) a person who sells goods produced by him by manufacture or otherwise".

It was contended that the factory was a manufacturer of sugar and paid excise duty on sugar to the Central Government and sugar was item 34 of the Second Schedule and therefore no tax was payable by a dealer who is a manufacturer of sugar. The purchase of sugarcane was said to be for manufacture of sugar and not for resale of sugarcane and therefore the tax which is levied on the dealer will not fall on the appellants on the purchase of sugarcane. The High Court held relying on the decision of this Court in State of Andhra Pradesh v. Abdul Bakshi & Bros. A.I.R. 1965 S.C. 531 that if a person carries on the business of buying or selling a commodity it is not necessary that he should sell the same commodity to become a dealer. The commodity may be converted into another saleable commodity or it may be used as an ingredient in the manufacture of a commodity. Therefore, the factories which bought sugarcane could be said to carry on the business of buying and selling sugarcane and the factories are dealer within the meaning of the Mysore Sales Tax Act. The third contention on behalf of the appellants was that the levy of 15 per cent purchase tax on the sugarcane on the appellants was in violation of Article 14 of the Constitution inasmuch as the rates were different in different States. It is an indisputable feature in the present appeals that all the factories in Mysore have been treated equally. Different rates in different States are explicable on various grounds. The quantity available, the conditions of agriculturists, the number of factories will all have distinctive features. Therefore, there can be no infraction of Article 14 of the Constitution. It was also said on behalf of the appellants that tax on purchase of sugarcane could not be collected by the appellants as tax. The High Court relying on the decision in Tata Iron & Steel Company v. State of Bihar [1958] S.C.R. 1355 said that the mere circumstances that the appellant could not collect from the purchasers of the sugar the amount the factories had paid as purchase tax on sugarcane would not alter the nature or quality of tax. This Court in the case of Tata Iron and Steel Company

said 'This is further made clear by the fact that the registered dealer need not, if he so pleases or chooses, collect the tax from the purchaser and sometimes by reason of competition with other registered dealers he may find it profitable to sell his goods and to retain his old customers even at the sacrifice of the sales tax. This also makes it clear that the sales tax need not be passed on to the purchasers and this fact does not alter the real nature of the tax which, by the express provisions of the law, is cast upon the seller'. It therefore follows that the appellants cannot impeach the imposition or levy of sale tax on the ground that the appellants could not collect from the purchasers of sugar the purchase tax paid by the appellants on purchase of sugarcane. Another contention was raised on behalf of the appellants that the authorities had not taken into account the varying rates of tax on purchase of sugarcane levied by different States while computing the cost of production of sugar in different States and fixing different selling prices of sugar. The High Court rightly did not entertain this contention because there were no materials to support the contention.

For these reasons, the appeals fail and are dismissed with costs. There will be one set of hearing fees.

G.C. Appeals dismissed.