

Supreme Court of India

M/S. Shri Ganesh Sugar Works And ... vs State Of Haryana And Others on 28 August, 1987

Equivalent citations: JT 1987 (3) SC 440, 1987 (2) SCALE 485, (1987) 4 SCC 604, 1987 (2) UJ 477 SC

Bench: K J Shetty, O C Reddy

JUDGMENT

1. The fifteen appellants are owners of Khandasari Units in the State of Haryana. There are seventy-two Khandasari Units in Haryana, out of which fifty-four are located within areas reserved for sugar mills under the Sugarcane Control Order. The units of the appellants are among these fifty-four. All the appellants' units were previously licensed under the Haryana Khandasari Sugar Manufacturers' Licensing Order. When they applied for renewal of their licenses, their applications were rejected by the Cane Commissioner on the ground there was 'acute shortage of cane in the assigned area of the sugar mills'. Sub-clause 3(c) of Clause 3 of the Haryana Khandasari Manufacturers' Licensing Order was quoted in support of the orders. These orders were questioned by the appellants before the High Court of Punjab & Haryana under Article 226 of the Constitution. A learned single Judge of the High Court allowed the writ petitions and directed the renewal of the licences of the appellants. On an appeal preferred by the State of Haryana and the Cane Commissioner under the Letters Patent, a Division Bench of the High Court reversed the judgment of the learned single Judge and dismissed the writ petition. This appeal has been filed by the aggrieved owners of Khandasari Units, who claim that their applications for renewal had been improperly rejected. The principal submission of Shri R.K. Jain, learned Counsel for the appellants was that their applications could have been rejected on the ground of the public interest but not on the sole ground of acute shortage of cane in the assigned area of sugar mill. He submitted that in determining the question of the public interest involved, it was necessary to take into consideration not merely the sugar mills, but also the interests of the Khandasari Units, the interests of the growers of sugarcane, the interests of the consumers, the interests of the trade, the interests of the workers, the effect on the economy of the country etc. None of these factors appeared to have been considered. He suggested that the court might appoint a Commission to make a deep study of the question and submit a report on the need and the extent of the restriction to be imposed on Khandasari Units. For the reasons which we shall presently give, we do not think we can accept the submission of Shri Jain or accede to his request.

2. The Sugarcane (Control) Order 1966 was made by the Central Government in exercise of its powers under Section 3 of the Essential Commodities Act. 'Factory' is defined by Clause 2(c) to mean "any premises including the precincts thereof in any part of which sugar is manufactured by vacuum pan process". Khandasari unit' is defined Clause 2(e) to mean "a unit engaged or ordinarily engaged in the manufacture of Khandasari sugar from sugarcane juice or rab." 'Khandasari Sugar' is defined to mean "sugar produced by open pan process." 'Producer of Khandasari sugar' is defined to mean "a person carrying on business of sugar manufacture by open pan process". 'Producer of sugar' is defined to mean "a person carrying on business of manufacturing sugar by vacuum pan process". 'Reserved Area' is defined to mean "any area where sugarcane is grown and reserved for a factory under sub Clause (1)(a) of Clause (6)." Clause 3 of the Control Order deals with minimum price of sugarcane payable by producer of sugar, that is, by a person manufacturing sugar by vacuum pan

process. Clause 4 deals with minimum price of sugarcane payable by producers of Khandasari sugar, that is, by persons manufacturing sugar by open pan process. Clause 6 deals with power to regulate distribution and movement of sugarcane Sub-clause 1(a) of Clause 6 enables the Central Government to reserve any area where sugarcane is grown for a 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, with a view to enabling the factory to purchase the quantity of sugarcane required by it. Clause 6(1)(c) enables the Central Government to direct by order that no gur or Khandasari sugar or sugar shall be manufactured from sugarcane except under and in accordance with the conditions specified in the licence issued in this behalf. Clause 6(1)(f) enables the Central Government to prohibit or restrict or otherwise regulate the export of sugarcane from any area (including a reserved area) except under and in accordance with a permit issued in this behalf. Clause 7(b)(ii) authorises the Central Government to direct that in a reserved area, no sugarcane or sugarcane juice shall be purchased for crushing or for manufacture of gur, shakkar, gul, jaggery, rab or khandasari sugar, as the case may be, by a crusher belonging to a grower or a body of growers of sugarcane or by a khandasari unit in the area except under and in accordance with a permit issued by the Central Government in that behalf. Clause 8 of the Control Order further enables the Central Government to, "by general or special order, issue directions to any producer of khandasari sugar or owner of a power crusher, khandasari unit or (crusher) or the agent of such producer or owner of a co-operative society, regarding the purchase of sugarcane or sugarcane juice, production, maintenance of stocks, storage, price, packing, payment, disposal, delivery and distribution of sugarcane, gur, jaggery and rab or khandasari sugar or the period or hours to be worked."

3. In exercise of the powers conferred by Clause 6(i)(e) of the Sugarcane Control Order read with Notification No. GSR. 1127/E.S.S.COM/Sugarcane dated 16th July, 1966, the Government of Haryana made the Haryana Khandasari Sugar Manufacturers' Licensing Order, 1972. Clause 3 of this Order deals with grant of liceneses, Sub-clauses 3 and 4 of Clause 3 are as follows:

(3) An application for the grant or renewal of a licence shall be disposed of by the Licensing Authority as expeditiously as may be possible and shall not be rejected except in a case where the Authority is of the opinion that it is necessary or expedient to do so in the public interest with a view to-

(a) regulate Khandasari Sugar manufacturing industry in the best interests of the industry;

(b) avoid uneconomic concentration of Khandasari Sugar manufacturing units; or

(c) ensure adequate supplies of sugarcane to a vacuum pan sugar factory.

(4) In case of a rejection of an application for grant or renewal of a licence, the applicant shall be entitled to a refund of the licence fee after the expiry of the period of limitation prescribed for filing an appeal against that order or on the rejection of the appeal.

4. We may mention that while the Commissioner is now the Licensing Authority, the State Government is the appellate authority. It is a matter of common knowledge that the Sugarcane

Control Order was made in the interests of growers of sugarcane primarily and also in the interests of the sugar factories, that is, factories engaged in the manufacture of sugar by the vacuum pan process and in the ultimate analysis in the interests of the consumers by making sugarcane available for sugar production. Apart from the fact that the sugar produced by the vacuum pan process is better suited for domestic consumption, it is undisputed that in the case of vacuum pan sugar factories, the recovery of sugar from cane ranges between 9.5% to 11.5% while the recovery in the case of Khandasari Units is hardly 5 to 6%. There can be no question that viewed from the viewpoint of production of sugar, it is advantageous to divert as much sugarcane as possible to sugarcane factories instead of Khandasari Units. Even so Khandasari Units flourish, as is generally known because of the byproduct of molasses. As experience showed that Khandasari units are better able to tap the growers of sugarcane, it became necessary for the Government to reserve areas for sugar mills. Otherwise, sugar mills would have to remain idle for long periods unable to withstand the competition of khandasari units in reaching sugarcane growers. It was for that purpose, that is, with a view to prevent sugar factories from remaining idle by making available to them sufficient quantities of sugarcane that the idea of reserving areas for sugar factories was conceived. In the years when there is no dearth of sugarcane and it is available in plenty, there is no problem and khandasari units will be free to purchase as much as sugarcane as they want in reserved areas also if the units are located there. But problems arise when on account of bad seasonal conditions there is a fall in the production of sugarcane in some years. In such years, restrictions have to be imposed on the purchase of sugarcane by khandasari units in areas reserved for sugar factories and when the seasonal conditions are indeed very bad, it may even become necessary for the Government to altogether ban the purchase of sugarcane by khandasari units in areas reserved for sugar factories. This may be done by the refusal to grant or renew licences to khandasari units operating in reserved areas in those years. That is precisely what has happened in the present case. It is because of extremely bad seasonal conditions that the Cane Commissioner was forced to refuse to renew the licenses of the appellants on the ground of inadequate of sugarcane for sugar factories. According to the figures mentioned by Cane Commissioner, the production of sugarcane had fallen from 52.50 lakh tonnes in 1983-84 to 46.20 lakh tonnes in 1984-85 and 41.38 lakh tonnes in 1985-86. We also have it that in the previous crushing season one of the sugar factories, namely, the Panipat Co-operative Sugar Mills only crush 10.80 lakh quintals of sugarcane as against the allotted quantity of 25 lakh quintals due to lack of availability of sugarcane. In fact, on September 14 1984, the Government of India had already addressed a communication to the Secretaries to the Governments of all sugar producing States requiring them to take certain measures to avoid diversion of sugarcane from sugar mills. It was stated in the letter that in the year 1983-84, sugar production had declined sharply from 82.32 lakh tonnes to 59 lakh tonnes. Among the measures suggested was "not to grant fresh licences to khandasari units in the reserved areas of sugar factories and to the extent possible even to encourage by all possible means the existing khandasari units in the reserved areas to shift out". We do not, therefore, have any doubt that having regard to the fall in the production of sugarcane and the fall in the production of sugar, the banning of supply of sugarcane to khandasari units by the method of refusing to licence khandasari units operating in reserved areas was in the public interest. The appeal is, therefore, dismissed.