IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:
MR. JUSTICE MIAN SAQIB NISAR, HCJ
MR. JUSTICE FAISAL ARAB
MR. JUSTICE SAJJAD ALI SHAH

CIVIL APPEAL NOs. 334 TO 344 OF 2004

(On appeal against the Judgment dated 27.03.2003 passed by the High Court of Sindh, Karachi in Constitution Petition Nos. D-1364 to D-1369/1998, D-1385 to D-1389/1998, D-1421/1998 & D-1266 & D-1267/1999)

Army Welfare Sugar Mills	**(In CAs 334 & 337/04)**
Shahmurad Sugar Mills Ltd.	**(In CA 335/04)**
Faran Sugar Mills Ltd.	**(In CA 336/04)**
Pangrio Sugar Mills Ltd.	**(In CA 338/04)**
Digri Sugar Mills Ltd.	**(In CA 339/04)**
Dewan Sugar Mills Ltd.	**(In CA 340/04)**
Seri Sugar Mills Ltd.	**(In CA 341/04)**
Larr Sugar Mills Ltd.	**(In CA 342/04)**
M/s Al-Abbas Sugar Mills Ltd.	**(In CA 343/04)**
Mirpurkhas Sugar Mills Ltd	**(In CA 344/04)**

...Appellants

VERSUS

1.	Government of Sindh through Secretary Agricultural & others	**(In CAs 334-338, 343, 344/04)**
2.	Federation of Pakistan etc	**(In CAs 339-342/2004)**

....Respondents

For the Appellants: Mr. Khalid Anwar, Sr. ASC
(in CA. Nos.334-338/2004 & 344/2004)

Nemo
(in CA. Nos.339-342/2004)

Mr. Muhammad Shaiq Usmani, Sr. ASC
(in CA.No.343/2004)

For the Applicant: Mr. N.C. Motiani, AOR
(in C.M.A No.1304/2004)

For Respondents: Mr. Zamir Hussain Ghumro, A.G., Sindh.
Mr. Aslam Butt, DAG
Mr. Agha Zaheer-ud-Din, Cane Commissioner, Sindh.
Mr. Abdul Aziz Channa,
Deputy Secretary Agriculture Department, Sindh.

Date of Hearing: 05.12.2017

JUDGMENT

FAISAL ARAB, J.- Appellants are engaged in the business of producing sugar and allied products from sugarcane. The sugar industry is regulated by the Sugar Factories Control Act, 1950 ('the Act'). Sugarcane in Sindh is ordinarily cultivated in the months of September and October and becomes ripe for harvesting in a year's time i.e. by October the following year. It is for this reason that under Section 2(h) of the Act, the crushing season starts on the 1st of October each year. Clauses (i) & (ii) of Section 16 of the Act empower the Provincial Government to fix minimum price for the procurement of sugarcane from the growers that has been exercised every year. As the quantity of sugar produced from sugarcane depends upon its sucrose content, a base sucrose recovery level in the climatic conditions of the Province of Sindh was determined to be 8.7% which is the main component of the sugarcane price fixation formula. Hence, whenever the procurement price of sugarcane is revised under the price fixation formula, it is worked out by keeping the base recovery level at 8.7%.

2. The level of sucrose content extracted from sugarcane depends on a number of factors such as the variety of sugarcane used as a seed, the soil conditions, the efforts of the growers and the efficiency with which the sugarcane is crushed in the mills. Thus the joint efforts and labour of the sugarcane growers and the sugar mill contribute towards achieving a sucrose recovery level which at times reaches well beyond the base recovery level of 8.7%. In or around 1981, due recognition was given to the contribution of

the growers by sharing with them the fruits of higher sucrose content that is achieved by a mill in a crushing season over and above the base recovery level of 8.7%. Thus for the crushing season 1981-82, in addition to the minimum procurement price fixed under Clauses (i) & (ii) of Section 16 of the Act, it was decided that the growers be paid as an additional price described as 'quality premium' at the rate of 9 paisa per maund for each 0.1% of excess recovery of sucrose achieved by a sugar mill over and above the base recovery level of 8.7%. This policy was implemented for about two years before it was given statutory cover under Sugarcane Quality Premium Order, 1984 issued for the 1983-84 crushing season. Under this statutory provision, the rate of 'quality premium' was enhanced from 9 to 11 paisas per maund. As this statutory cover for the payment of quality premium was only for the crushing season 1983-84, a permanent statutory provision in the form of Clause (v) to Section 16, as applicable in the Province of Sindh, was inserted in the Act the following year under the Sindh Sugar Factories Control (Amendment) Ordinance, 1985. This was done to ensure that the growers at the end of each crushing season get quality premium in case the mills to which they have supplied sugarcane achieve sucrose level that is higher than the base recovery level. Clause (v) of Section 16 of the Act reads as under:

> *'(v) The Provincial Government may direct the Factories to pay quality premium at the end of the crushing season at such rate as may be specified by the Provincial Government in proportion to the sucrose recovery of factory in excess of the base level sucrose content determined by the Provincial government, from time to time.'*

3. After paying quality premium to the growers for seventeen long years right from the crushing season 1981-82 till 1997-98, the mill owners suddenly felt aggrieved when the rate of quality premium for the 1998-99 crushing season was raised from 32 paisas per maund to 50 paisas. In this regard the appellants filed constitution petitions in the High Court of Sindh, questioning the vires of clause (v) of Section 16 of the Act on the grounds that payment of quality premium is unconstitutional being confiscatory in nature. During pendency of the constitution petitions, the appellant sought a restraint order against the Provincial Government from notifying quality premium which was granted on 25.02.1999. After dismissal of the constitution petitions vide impugned judgment dated 22.03.2003 the appellants preferred the present appeals with the leave of this Court and vide order dated 19.02.2004 the operation of the impugned judgment was suspended. Hence, no quality premium notification under the provisions of Clause (v) of Section 16 of the Act has been issued after the crushing season 1998-99.

4. Learned counsel for the appellants argued that every notification for payment of quality premium issued in terms of clause (v) of Section 16 of the Act takes the base recovery level to be 8.7% which should not remain constant. According to him, the revision of base recovery level from time to time is envisaged under Clause (v) of Section 16 of the Act. In this regard much emphasis was laid by the learned counsel on the words *'from time to time'* contained at the end of the said clause.

5. Quality premium is nothing but an additional price which becomes payable to the growers only when a sugar mill achieves sucrose recovery level that crosses the base recovery level of 8.7%. The reason to fix the base recovery level at 8.7% for the purposes of determining the rate of quality premium is that this 8.7% is also taken as base level for fixing the sugarcane procurement price under the sugarcane price fixation formula. Obviously then the quality premium becomes payable for each 0.1% of excess recovery of sucrose achieved by a sugar mill over and above the base recovery level of 8.7%. In other words it is payable for each decimal point of sucrose content that is recovered beyond the base level of 8.7%. This base level therefore has to remain the same as a constant factor and becomes starting point in the determination of the excess decimal points and this is exactly the mandate of the law itself. The term *'from time to time'* contained in Clause (v) of Section 16 of the Act therefore has nothing to do in any manner with the base recovery level which is solely intended to empower the Provincial Government to specify the rate of 'quality premium' from time to time. Thus it is the periodical revision in the rate of quality premium that is intended by the term *'from time to time'* nothing else. One can articulate the mandate of Clause (v) of Section 16 of the Act in the following words *'Factory has to pay quality premium in proportion to the sucrose recovery that is in excess of the base level at a rate specified from time to time.'* This is exactly what was being done by the Provincial Government and simultaneously honoured by the sugar mills for seventeen long years right from 1981-82 crushing season

when the concept of quality premium was first introduced and implemented until 1998-99 under statutory provisions. However, the grant of quality premium stood discontinued only because of restraint orders passed in these proceedings. The argument that the words *'from time to time'* are intended to revise the base recovery level is therefore misconceived.

6. There is another important aspect of this case, which needs to be highlighted here. After the temporary restraint orders against payment of quality premium were passed in these proceedings almost every sugar mill has delayed its crushing until the 2nd week of December. Had the start of crushing season been strictly adhered to, as required under Section 2 (h) of the Act, the harvesting of sugarcane would take place between 1st of October and the first week of December as well. This would leave a very large area of agricultural land available for cultivation on which other valuable and important Rabi crops, mainly wheat and sunflower could be sown. One of the reasons that suit the mills in delaying the start of crushing season is to derive maximum benefit of higher recovery level of sucrose that is achieved when the statutorily defined crushing season is delayed by about two months. This practice has been consistently adopted over the years without impunity as on account of injunctive orders passed in the present proceeding the Provincial Government was restrained from notifying the rate of quality premium. As a consequence of this, the sugar mills no more remained bound to pay quality premium to the growers and hence have been exclusively enjoying the benefits of high sucrose recovery level unconcerned with the loss of

valuable Rabbi crops suffered by the growers that could have been cultivated on a very large area of land which becomes available when the crushing season starts on 1st of October as provided in law.

7. It would be worthwhile to also examine the financial implication of the disputed notification in comparison to some of the notifications of the past under which quality premium were being paid by the sugar mills without any reservation. In the crushing season of 1988-89 for each increase of one decimal point in sucrose recovery level beyond the base level of 8.7%, the financial impact was only 1.50% of the then prevalent price of the sugarcane. In 1989-90 it was 1.35% of the price for each decimal point increase. In so far as the disputed crushing season is concerned, the impact of increase in the quality premium as to the price of sugarcane was no more than 1.38% for each decimal point increase. Hence, nothing unusual took place when the rate of quality premium for the disputed crushing season 1998-99 was raised to 50 paisas per maund. From the comparison of rates of quality premium that were declared from time to time, it is evident that the rate revised for the disputed crushing season cannot be said to be phenomenal as it was more or less the same as was determined in the previous crushing seasons. In our view, the only situation when an increase in the rate of 'quality premium' can conceivably be called in question is when it can be demonstrated that revision in the rate of quality premium does not commiserate with the revision in the minimum procurement price of sugarcane. Only in such situation a case of erratic increase without any

discernible link to the sugarcane procurement price can be made out. In the present case, as the revision of rate of quality premium was only 1.38% of the sugarcane price for each decimal point increase, there appears to be no logical reason in denying the growers their due share in facilitating the mills in achieving higher than the base sucrose recovery level which invariably results in higher sugar production.

8. From the above discussion, it is amply established that payment of quality premium on sucrose recovery level which is over and above the base level of 8.7% is not something which can be said to be some kind of benevolence or is bereft of any consideration. This right to pay quality premium created under Clause (v) of Section 16 of the Act is based upon intelligible criteria and, therefore, cannot be regarded as confiscatory so as to question its vires. In-fact its denial would be unfair and confiscatory in nature as it would amount to disregarding the contribution of the growers in achieving a higher level of sucrose content, which directly results in higher sugar production. The law calling upon the sugar mills to pay quality premium was not only acknowledged by them in their pleadings but duly honoured right from the crushing season of 1981-82 till 1997-98 without any reservation or objection. We find no reason which entitles the sugar mills not to honour the mandate of the law and deny the growers the fruits of their labour to which they on the principle of equity as well as law are duly entitled.

9. We therefore conclude that the grant of quality premium being just and fair and based on statutory provision is legally enforceable. The impugned notification was validly issued, hence these appeals are dismissed. We may, however, mention here that in future notification as per past practice for payment of quality premium should be issued along with the notification of fixation of the minimum procurement price of sugarcane and the same shall be paid to the growers not later than two months after the crushing season comes to an end.

CHIEF JUSTICE

JUDGE

JUDGE

Announced on **05.03.2018** at **Islamabad** by
Hon'ble Mr. Justice Faisal Arab

Approved For Reporting
Khurram