

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Date

Order with Signature of Judge(s)

Present:

Mr. Justice Muhammad Ali Mazhar

Mr. Justice Agha Faisal

C.P. No.D-3458 of 2019

Sindh Growers Alliance & Another.....Petitioners

Versus

Province of Sindh & Others.....Respondents

C.P. No.D-5507 of 2019

Sindh Abadgar Board.....Petitioner

Versus

Province of Sindh & Others.....Respondents

C.P. No.D-3458 of 2019

1. For hearing of CMA No.15518/2019.
2. For hearing of main case.

C.P. No.D-5507 of 2019

1. For orders on office objection.
2. For hearing of CMA No.24260/2019.
3. For hearing of main case.

Date of Hearing: 19.12.2019

Petitioner No.2, Syed Mureed Ali Shah, is present in person alongwith Nawab Zubair Talpur, Sindh Growers Alliance (In C.P. No.D-3458 of 2019).

Mr. Rafiq Ahmed Kalwar, advocate alongwith Mr. Ghulam M. Dars, advocate, for the petitioner and Mehmood Nawaz Shah, Vice President of the Petitioner (In C.P. No.D-5507 of 2019).

Mr. Abdul Sattar Pirzada, advocate alongwith Mr. Mamnoon N. Chaudhry, advocate for the respondent Nos.3 to 41.

Mr. Jawad Dero, Additional Advocate General Sindh.

Mr. Jawed Sibghatullah Mahar, Cane Commissioner Sindh alongwith Mr. Abdul Qayyum Rajput, Technical Officer (H.Q.), Cane Commissioner Officer, Hyderabad, Sindh.

Ahmed Bawany, Executive Member, Pakistan Sugar Mills Association, Wasif Khalid – Mirpurkhas Sugar Mills, Khalid Hayat – Faran Sugar Mills, Aamir Bashir – Habib Sugar Mills and Sumair Ali Khan – Mehran Sugar Mills.

Muhammad Ali Mazhar, J. The controversy before us is the non-payment of quality premium by sugar mills to growers, payable at the end of each crushing season, as the same has not been paid since 1998.

2. Brief facts of the case are that several sugar mills had challenged the vires of provisions contained in Section 16 of the Sugar Factories Control Act 1950 ("Act"), in this Court through C.P. No.D-1364 to 1369 of 1998 and some other petitions. The petitions were dismissed by this Court vide judgment dated 22.03.2003, which was challenged by the sugar mills in the Honorable Supreme Court in Civil Appeal Nos.334 to 344 of 2004 and vide judgment dated 05.03.2018, these appeals were dismissed by the Apex Court. The relevant portion of the judgment of the Honorable Supreme Court is reproduced as under:

"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 the 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...

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 paise 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."

3. During pendency of these appeals restraining orders were passed by the Apex Court, therefore, according to the petitioners, pending appeals in Supreme Court, the quality premium was not

paid from the crushing season 1998-99 to 2018-19. In fact, both the petitions have been filed for execution and implementation of Apex Court order in terms of Article 187(2) of the Constitution of the Islamic Republic of Pakistan, 1973. The learned counsel for the petitioners have also filed before us copies of all the notifications, relevant to price of sugarcane and quality premium, for the period for which the said amounts have not been paid thereto, in compliance of the earlier orders of this Court.

4. Mr. Rafiq Ahmed Kalwar Advocate and Mr. Syed Mureed Ali Shah Advocate have jointly argued that under Section 16(3) of the Act all sugar mills are required to pay quality premium, which has not been paid and after dismissing of the appeals by the Honorable Supreme Court, there is no justification to withhold this amount any further, as earlier vires were challenged with regard to Section 16 of the Act but they could not succeed.

It was further argued that the Cane Commissioner Sindh has already issued notices to the sugar mills which shows reference of the judgment passed by the Honorable Supreme Court in Civil Appeal Nos.334 to 344 of 2004, for payment of quality premium. They further argued that despite this judgment, no compliance was made by any of the sugar mills for payment of quality premium.

5. Mr. Abdul Sattar Pirzada Advocate, learned counsel for the respondent Nos.3 to 41/sugar mills association argued that these petitions are not maintainable, as the petitioner No.1 in C.P. No.D-3458 of 2019 and the petitioner in C.P. No.D-5507 of 2019, are associations and they could not invoke the jurisdiction of this court under Article 199 of the Constitution to espouse the cause of their

members. However, in C.P. No.D-3456 of 2019 the petitioner No.2 is Syed Mureed Ali Shah, who himself claims to be a grower of the sugarcane but he has not given any previous claim as to what he supplied and what amount is due from which sugar mill. He further argued that it is the responsibility of the Cane Commissioner Sindh under the law to deal with this situation and the said forum is an adequate remedy, which the petitioners have not availed and have directly approached this court instead. According to Mr. Abdul Sattar Pirzada Advocate, no individual grower has approached the Cane Commissioner Sindh with his claim in such regard.

6. Mr. Jawad Dero, learned Additional Advocate General has submitted that all the notifications requiring payment of quality premium, with effect from 1998 till conclusion of the last crushing season, remain in the field.

7. The Cane Commissioner Sindh is present in court and submitted that his office is taking serious efforts in view of the judgment of Honorable Supreme Court for recovery of quality premium but the sugar mills management failed to comply the judgment of the Honorable Supreme Court. He has also attached pro forma with his reply to show that each sugar mill was sent the operative part of the judgment passed by the Honorable Supreme Court, for compliance, which remains awaited.

8. At this juncture, Mr. Abdul Sattar Pirzada, Advocate and Mr. Rafiq Ahmed Kalwar Advocate submitted that payment can only be made after determination of relevant sucrose recovery per crushing season, in terms of the pertinent notifications issued in respect of each crushing season, copies whereof are placed on record.

9. After arguing at some length the learned counsel for the petitioners (in the presence of the petitioners' representatives named supra) and respondents (in the presence of the respondents' representatives named supra) have consensually agreed to settle this matter and sought disposal of these petitions in the following terms:

- A. In terms of the notifications, issued by the Government of Sindh in terms of Section 16(3) of the Act, the Cane Commissioner shall determine the sucrose recovery rate for the respective crushing seasons 1998-99 till 2018-19 in accordance with law, within 20 days from the date hereof.
- B. The Cane Commissioner Sindh shall examine each notification separately and determine the sucrose recovery rate according to each notification.
- C. Each grower shall apply to the respective sugar mill with their claim for the payment of quality premium and also submit the copy of application to the Cane Commissioner Sindh and after verification of the claim of such grower, the sugar mills shall make the payment to them.
- D. The documents shall be verified within two months, thereafter, the payment will be made to the growers.
- E. In case, despite verification of the claim, the amount is not paid, the growers may approach to the Cane Commissioner Sindh and the Cane Commissioner Sindh shall take action in accordance with law against the sugar mills for non-payment of quality premium to the growers.
- F. At this juncture, Mr. Abdul Sattar Pirzada Advocate submits, on instructions, that some sugar mills have already paid the quality premium to the growers. We have already observed that each grower has to apply and after submitting his application, the sugar mill shall verify his claim for the payable amount. On the contrary, Mr. Rafiq Ahmed Kalwar Advocate

and Mr. Syed Mureed Ali Shah Advocate argued that during pendency of appeals in the Honorable Supreme Court, the restraining orders were operating, hence, there is no question of payment of such amount. Be that as it may, it is reiterated that each claimant has to submit the application that will be verified by the sugar mill for payable amount.

10. These petitions, along with listed applications, are disposed of by consent upon the terms recorded supra. The office is instructed to communicate copies of this order to the learned Additional Advocate General and the Cane Commissioner Sindh.

JUDGE

JUDGE

Khuhro/PA