

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.2766 of 2021

[Mirpurkhas Sugar Mills Ltd & Others

Versus

Province of Sindh & Others

Counsel for Plaintiffs	Mr. Abdul Sattar Pirzadar & Mamoon N. Choudhry
Counsel for Defendant No.7	Mr. Muhammad Rafiq Kalwar a/w Mr. G. M. Dar & Mr. Muhammad Yasir
Counsel for Defendant No.8	Mr. Ahmed Ali Ghumro
Counsel for Intervener	Syed Mureed Ali Shah
For official Defendants	Mr. Ghulam Abbas, AAG
Dates of hearing	9.3.2022, 14.3.2022 & 15.3.2022

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JUDGMENT

Muhammad Shafi Siddiqui, J.- The plaintiffs are sugar mills owners of Sindh and have jointly challenged the Notification bearing No.8(142)/SO (Ext)/2021-22 dated 04.11.2021 whereby defendant No.3 i.e. Agricultural Supply and Prices Department of Government of Sindh was pleased to notify the minimum price of the sugarcane, which is claimed to be illegal, unlawful and without jurisdiction.

1. The plaintiffs` counsel Mr. Abdul Sattar Pirzada submitted that under the Sugar Factories Control Act, 1950 the Board is established under Section 3 of the Act as amended in terms of the (Provincial) Sindh Amendment Act of X of 2009 dated 9.12.2009 which sets the members of the board, followed by a price fixation mechanism by yet another Sindh Amendment Act X of 2009 dated 9.11.2009 in the ibid act of 1950, wherein, as argued, neither recommendations

of the board were adhered nor consideration for fixation of minimum price on the basis of Section 16-a and 16-b of the Act were followed. Thus, it is argued that it rendered entire exercise of fixation of minimum price as a futile attempt and is only an eye wash.

2. Learned counsel for the plaintiffs further submits that the meeting as held was a coram non judice as the Secretary Agriculture, Supply & Prices Department of Government of Sindh was absent and that too would render the meeting of the sugarcane control board for fixation of minimum price as unlawful.

3. The Defendant No.7 which is a statutory association of sugarcane growers has opposed and assisted this court that the Cabinet deliberated on the fixation minimum purchase price of sugarcane and the provisions of 16-a and 16-b of the Act were not violated, in fact complied in letter and spirit. He submitted that this court cannot exercise its jurisdiction in a matter that concerns with the policy and that too where no malafide could be attributed. The deliberation is apparent in terms of the minutes of the Cabinet which is filed alongwith calculation sheet for cost of production, attached with the compliance report.

4. Syed Mureed Ali Shah, learned counsel has moved an independent application as being an Intervener/grower's private group which is seriously opposed by Mr. Pirzada on the count that since the case of the growers is being represented by defendant No.7 there cannot be an independent right of an individual grower who otherwise has to sail and sink with defendant No.7. He, however, pointed out that under Order 1 Rule 10 the presence of the intervener is neither essential nor required.

Heard arguments and perused record.

CMA No.21052/2021.

5. As far as application of Syed Mureed Ali Shah is concerned, in presence of Sindh Abadgar Board which a representative of the sugarcane growers of Sindh, the private association of the growers of sugarcane can neither be necessary nor proper party, as it could not be a case that in their absence, question arising out of suit cannot be decided. Order 1 Rule 10 provides that name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit be added. It is therefore in the presence of statutory body of Sindh Abadgar Board i.e Defendant No.7 representing growers, it is inconceivable that questions arising out of this suit cannot be decided in absence of intervener.

6. The Board, required to be established in terms of Section 3 of the Act of 1950 consisting of numerous members which include Sindh Abadgar Board as being its member, hence, the voice of the sugarcane growers of Sindh was made available, therefore, it is not lawful, in presence of grower's statutory representation that every grower of sugarcane of Sindh and/or their private groups, should be heard by the Board constituted under Section 3 of the Act for fixation of the minimum price. Hence, the intervener's application bearing CMA No.21052/2021 is dismissed.

7. As far as main case is concerned, Mr. Pirzada counsel has requested for the disposal of the entire suit summarily as he opined that the issue involved does not require evidence. He took the risk and consequently, following issues were framed on 21.2.2022:

- i. Whether the impugned notification is within the scope and ambit of Section 16 of The Sugar Factories Control Act, 1950?*
- ii. What should the decree be?*

8. Under the scheme of Sugar Factories Control Act, 1950, Section 3 constitutes the Board which performs functions as may be prescribed and the business shall be conducted in such manner and in accordance with such procedure as may be prescribed. One of the prescribed duties of the board is to advice provincial government for the purpose of fixing minimum prices of sugarcane by recommending their view. The board in this regard consists of Sugarcane Commissioner who is designated as Chairman and there are other members, such as: Two members of the provincial assembly to be nominated by the Speaker; Secretary to the Government of Sindh Agriculture Department; Cane Commissioner; Representative of Pakistan Sugar Mills Association Sindh Zone; Representative of Sindh Abadgar Board; Representative of Sindh Chambers of Agriculture; Representative of Sugarcane Factories Association; And such other officials and non-official members as may be appointed by the Government. Section 16 of the Act enables the government to fix minimum price of the sugarcane; It could either be on the recommendation of the board as constituted in terms of Section 3 or otherwise. The government may notify the determined minimum price of the sugarcane in terms of Section 16 of the Act, 1950.

9. The original text of Section 16 of the Act of 1950 enables the provinces/ provincial government to notify minimum price and the provincial Assembly of Sindh has also amended the relevant provisions of this Act, whereby mechanism of fixation of minimum price of sugarcane was set, as even before promulgation of 18th Amendment in the Constitution of Islamic Republic of

Pakistan, the subject of fixation of minimum sugarcane price remained with the provinces. The legislature in its wisdom gave authority to the provinces to determine minimum sugarcane price keeping in consideration various unequal factors and circumstances prevailing in respective provinces. Hence, in view of the respective authority to amend the law relating to fixation of minimum sugarcane price, Sindh Government vide amendment Act, X 2009 and the original text of Section 16 was substituted.

10. Mr. Pirzada has relied upon the minutes of the meeting of the Sugarcane Control Board which was held on 14.9.2021 wherein the Secretary Agriculture Supply and Price Department of Sindh Government was absent and hence Mr. Pirzada insisted that this alone has rendered the meeting *coram non-judice*.

11. For the purposes of statutory organization's meeting, such as, one in hand, the entire quorum if not available, the conclusion of the meeting recorded via minutes cannot be brushed aside or ignored, unless the statute otherwise required. In the meeting of the board as constituted under Section 3 of the Act of 1950 out of all 10 members, only one claimed to have been missing whereas none of the members present voted against the conclusion and recommendation being drawn. Thus nothing could have turned in his presence when it comes down to vote count. Mr. Pirzada however has not justified arguing at one point that Board's quorum was not complete and on the other hand attempted to enforce Board's recommendation of minimum price. Further the sugarcane mills owners were also represented by Pakistan Sugar Mills Association, Sind Zone and Sindh Abadgar (Sindh grower), and no such objections were raised at the relevant time that the quorum was not complete. It was the unanimous decision. The decision cannot be faulted on the ground that one of the members did not participate.

12. In the case of *Rick Boucher v. Metis Nation of Alberta Association*¹, in terms of para 41 of the aforesaid judgment, as relied by Mr. Kalwar, the bench comprising of three judges distinguished between the members of the jury and their deliberative process and the statutory body on the other hand. It was opined that the statutory body can proceed by majority vote. It is therefore, not conceivable that every member of the board should be available when the majority of those who attended the meeting have reached unanimous decision. The law [Act of 1950] itself does not provide consequences of alleged incomplete quorum as it is to be convened at the pleasure of those present. I therefore, score off first point in this regard that quorum for meeting of the board constituted under Act of 1950 would have effected the recommendation, or the board to be resurrected. However, nothing could have turned on this point even if presence of secretary matters. The law requires government to determine price “otherwise”. Recommendations were not taken into consideration as it was not obligatory. The government then as required under Section 16, convened its Cabinet meeting for the purposes of fixing minimum price in terms of Section 16. The meeting of the Cabinet was held on 4.2.2021 Thursday at 08:30 a.m. under the Chairmanship of worthy Chief Minister Sindh and amongst many, the “agenda 6” before the Cabinet was fixation of the minimum sugarcane price and commencement date of crushing for the season 2021-22.

13. Mr. Pirzada has seriously laid emphasis that the board [which is otherwise disputed by him] held its meeting with the growers and representative of the mills in September, 2021 in which the mill owners proposed 10% increase in the price of last year whereas the growers proposed 20% increase. However, the cabinet members deliberated upon the proposed

¹ 2009 ABCA 5

price within their frame of law. Cabinet meeting suggests that the board's recommendations were not taken into consideration (as it was not obligatory). The cabinet members deliberated on the cost of yielding the said crop and then consequently, deliberated as to what the minimum price should be? Board's recommendations could be one of the considerations for notifying the minimum price of sugarcane of the respective year but the cabinet was not under compulsion to follow. Cabinet deliberated and fixed minimum price on the strength of Section 16-a and 16-b of the Act 1950 i.e. the cost of production of the sugarcane and the return of the growers from alternate crops and the general trend of prices of the agricultural commodities.

14. The plaintiffs' counsel during the course of their arguments has not attributed any malafide as far as the fixation of the minimum price by the Government of Sindh is concerned, however, it is only argued that the cost of production of the sugarcane and the return to the growers from alternative crops were not taken in consideration.

15. It is not essential that the minutes of the meeting should demonstrate each and every arguments that was deliberated. The minutes of the meeting should be a gist of the arguments and the conclusion formed and it can not form an encyclopedia of deliberations. Notwithstanding this, the cost of production of sugarcane for the harvesting season 2021-22 was taken into consideration as could be seen from document attached and determination is based on land preparation which include; ploughing the field, leveling, seedbed preparation & planting, cultivation, furrow making, cost of seeds, fertilizers i.e. DAP and Urea, inter-culturing, plant protection, irrigation, labour, management, harvesting, loading and transportation to sugar mills, government taxes, land rent, abyana, sugar cess and approx. yield per acre, which vary from province

to province. It is pertinent to mention that the said calculation is only to the extent of production cost of the sugarcane whereas the profit with reference other preconditions referred in Section 16(a)(b) have to be added before the fixation of sugarcane minimum price. By second condition, the provincial Government was required to consider the return to the grower from alternative crops which otherwise could be harvested by the grower if he had not harvested the sugarcane. As agreed in the proceedings' the sugarcane harvesting period consists of 14 to 16 months and in this backdrop if the sugarcane grower harvests some other kind of agricultural commodity like Tomato, Onion, Wheat, Mustard, Cotton and Chili etc. in lieu of long awaited sugarcane crop he may get required profit by the said alternative crops and this was the reason that the legislature after providing the cost of production (input expenditure) of sugarcane imposed the second two conditions to accommodate the sugarcane growers by providing them reasonable and justified profit. Offcourse the growers were/are not under compulsion to grow sugarcane but this how the law stands.

16. Mr. Pirzada demonstrated that the prices in Sindh have always been on a higher side as compared to the Punjab province.

17. This would be an extraneous issue if sugarcane price in the province of the Punjab is compared with the minimum price in Sindh as the factors involved in fixation of minimum price in the Punjab are not available before this court. Although this is not the core issue arising out of the litigation as here I have to see whether provision of Section 16 of the Act, 1950 have been complied substantially, however, the factors that rendered difference of prices between the two provinces are that harvesting season of two provinces is different; Fertility of the Punjab soil that normally yields more per acre than in

Sindh; irrigation water; subsidy on fertilizer and higher level sucrose. These are only tentative assessment since Mr. Pirzada has, in terms of the minimum price of the sugarcane historically, has questioned its fixation to have been always more than Punjab sugarcane price whereas it is always been less in the province of Sindh.

18. In view of above deliberation, I answer Issue No.1 in affirmative that the minimum price sugarcane as fixed by the government of Sindh vide Notification bearing No.8(142)/SO (Ext)/2021-22 dated 04.11.2021 is within the frame of Section 16 of the Act, 1950. Consequently, the suit, as such, is dismissed with no order as to costs alongwith pending application[s].

J U D G E

Karachi;

Dated: 21.03.2022

Mush/ps