

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present: - Hon'ble Mr. Justice Subhendu Samanta.

IN THE MATTER OF

WPA 4083 of 1983

with
WPA 3510 of 1981
Vishnu Sugar Mills & Ors.
Vs.

Union of India & ors.

With
WPA 13574 of 1981
Vishnu Sugar Mills & Ors.
Vs.

State of West Bengal

With
WPA 4661 of 1984
CAN 1 of 2017 (Old No. CAN 3344 of 2017)
Vishnu Sugar Co. Ltd & Ors.
Vs.
Union of India & Ors

For the Petitioners : **Mr. Mainak Bose, Adv.,**
Mr. Sachin Shukla, Adv.,
Mr. Rishab Karnani, Adv.,
Mr. Vivek Jhunjhunwala Adv

For the
Union of India : **Mr. D.N Ray, Adv.,**
Mr. Rajesh Kumar Shah Adv

Reserved on : **24.03.2025**

Judgment on : **16.06.2025**

Subhendu Samanta, J.

1. Petitioner No.1 is company engaged in the business of manufacturing sugar. The petitioner No.1's factory was set up on 1932-1933 and is registered under the provision of Industries (Development and Regulation) Act, 1951. The petitioner No.2 is a shareholder of petitioner No.1.

2. In 1961 the crushing capacity of the petitioner factory was expanded from 800 ton to 1200 ton of sugarcane per day. Licences were accordingly issued by the Ministry of Commerce and Industry under Industrial Undertaking Rules, 1952.

3. In the year 1977 the petitioner applied before the appropriate authority for further expansion of its licence capacity was not consider and turn down.

4. Government of India, in exercise of its powers under Section 3(c) of the Essential Commodities Act, 1955 published Price Determination Orders for each year. By the Price Determination Order the Central Government fixed the price to be paid to the sugar mills for levy sugar to be supplied by them. Separate price were fixed for levy sugar to be supplied by the factories in schedule V and schedule VI based on efficient and less efficient

unit. The less efficient units are placed in schedule VI and efficient units are placed in schedule V. Government of India appointed a High Level Committee (HLC) on the sugar industry to go into cost structure of the sugar industry. The said committee submitted its reports in 1980 and it has been observed therein that as far as unit capacity is concerned it is generally recognised that units having capacity below 1250 tons cane crush per day have much higher cost of production and therefore these have been put in one strata. The factories in this strata have a cost of production i.e., Rs.26/- per quintal higher than others. On the basis of the above, the said committee recommended that differential of Rs.26/- per quintal as extra levy price be permitted to the factories that are placed in the stratum i.e., the factories under less efficient unit are entertained to get the differential amount of Rs.26/- per quintal.

5. It is the further case of the petitioner that though the crushing capacity of the petitioner's factory is 1200 tons per day but in the Price Determination Orders the factory of the petitioner was wrongfully and illegally placed in schedule V which is schedule for efficient units.

6. Representations were made by the petitioner to the Government of India. The Government of India thoroughly examined and scrutinized all the relevant factors and after being fully satisfied that the placement of the petitioner's factory in schedule V of the Price Determination Order was incorrect and erroneous and that the factory of the petitioner No.1 is a less efficient unit. Thus on December 15, 1980 the Central Government, the Government of India amended the said Price Determination order and inter alia deleted the petitioner No.1 factory from schedule V and included the same in the schedule VI being a less efficient unit.

7. After issuance of the said amendment order petitioner was paid by the Government of India for supply for levy sugar at the price payable to the factories in schedule VI.

8. On June 13, 1981 the Government of India issued a purported order called sugar (Price Determination for 1980-81 Production) amendment order 1981 (Second Amendment Order) by such amendment order (second) the factory of the petitioner was again placed in schedule V and deleted from schedule VI.

9. The Government of India has issued separate Price Determination Orders for each year the petitioner has challenged the said Price Determination Orders for each year by filing these 04 writ petitions.

The petitioner is aggrieved with those Price Determination Orders on the grounds that though petitioners factory is come under the zone of schedule VI factories (less efficient factories) but they are placed in schedule V category of factories. Thus, these writ petitioners are filed against each Price Determination Orders.

Learned Counsel appearing on behalf of the petitioner submits that the scope of challenging in the writ petitions is confined to the price determination order and whether, as per the policy of Government and the conditions made therein, the petitioners plant false under efficient or less efficient unit. It is further contention of the petitioner that two criteria had been laid down by the high level committee and approved by the Government while classifying a unit as an efficient unit/less efficient unit. **First condition** relates to the age of the plant and

the **second criteria** related to the licensed crushing capacity per day of the factory.

The aforesaid issue becomes the subject matter of several writ petitioners across the country. Learned Counsel for the petitioner further argued that the division Bench of Delhi High Court in the case of civil writ petition No. 181 of 1981 (**Godabari Sugar Mill Limited Vs. Union of India and Anr.**) decided on May 28, 1981 has come to a specific decision that crushing capacity per day is the license capacity in the capacity which a plant is in a position to achieve regardless of whether a plant as capacity to crush more or less, what is required to be considered is the capacity which has been license and/or authorise by the appropriate authority of the Government. He further argued that the Division Bench has further pleased to hold that the criteria has applied by the Union of India for placing the petitioners factory in schedule V in place of schedule VI was not correct.

10. Learned Counsel for the petitioner further argued that this court in a case of **Rega Sugar Company Limited and Anr. Vs. Union of India and Anr.**, decided on March 21, 2002 following the principle laid down in **Godabari Sugar Mills Ltd. (supra)** was

pleased to set aside the classification of the Unit concerned from the schedule V and directed petitioner therein to be treated as in schedule VI of the relevant Government Order.

11. He also argued that Hon'ble High Court at Delhi in batch of writ petitions filed by the petitioner being **Bishnu Sugar Mills and Anr. Vs. Union of India and Anr.** decided on February 26, 2004 following the principle laid down in **Godabari Sugar Mills Ltd. (supra)** was pleased to set aside the classification of the unit concerned from schedule V, the same point was in issue in this batch of writ petitions also.

12. Learned Counsel appearing on behalf of the Union of India submits that Government of India appointed a high level committee (HLC) on the sugar industry to go into cost structure of a sugar industry. The said committee submitted its report in 1980 in the said report the committee observed that as far as the unit capacity is concerned it is generally recognised that units below 1250 tons cane crush per day have much higher costs of production and therefore those have put in one strata. The factory in this strata have a cost of production that is Rs 26 per quintal higher than others. Part basis of above said committee

recommended differential of per quintal as extra levy price be permitted to the factories that are placed in this strata.

13. He further submits that on the basis of said recommendation of HLC a criteria for eligibility for being granted as extra levy price of Rs.26/- per quintal to weak factories was drawn up by the Government of India. The sugar mills in schedule V are entitled to this differential of Rs.26/- per quintal.

The criteria for putting sugar factory in schedule V and schedule VI are as follows

Schedule V

List of vaccum pan sugar factories erected (either with new or old machinery).

- i. On or after the first day of October, 1955. Or**
- ii. Prior to the 1st day of October, 1955, and have a licensed daily cane crushing capacity of**
 - a. 1250 tonnes or more; or**

b. Less than 1250 tonnes, but have expanded the capacity up to 1250 tonnes or more either under the liberalised licensing policy or otherwise; or

c. Less than 1250 tonnes, but have crushed upto 1250 tonnes or more during each of the preceding five years.

Schedule VI

List of vaccum pan sugar factories erected prior to the 1st day of the October 1955, and have a licensed daily cane crushing capacity of

i. Less than 1250 tonnes or

ii. Less than 1250 tonnes and have also not expanded the capacity to 1250 tonnes or more under the liberalised licensing policy or, otherwise: or

Less than 1250 tonnes and have also not crushed 1250 tonnes or more during each of the preceding five years.

4. The Vishnu Sugar Mills Ltd. was examined with reference to these criteria and the mill was rightly placed in Schedule

V as it justified the following conditions laid down for placement of the Sugar Factory in Schedule V:

- i. Set up before 01.10.1955 and**
- ii. It has achieved a cane-crushing capacity which is not less than 1250 Tonnes.**

5. The supporting documents that prove that the Vishnu Sugar Mills Ltd. was rightly placed in Schedule V are as under:

i. As far back as on 13th April, 1973 the Vishnu Sugar Mills Ltd., by its letter (Annexure-A) addressed to the then Director, Sugar Technical, Directorate of Sugar and Vanaspati, Department of Food, Jamnagar House, New Delhi, informed that the writ petitioners had achieved 1500 tonnes cane crushing capacity at their factory at Harkhua, and intended to extend it further upto 1750 tonnes per day.

ii. Subsequently, in their letter dated the 21st October, 1974 (Annexure-B), addressed to Shri A.K.Bose, Deputy Director, Sugar Technical, Dte. of Sugar & Vanaspati, Krishi Bhawan, New Delhi the Vishnu Sugar Mills Ltd. furnished certain

information and made a request for grant of permission to extend the capacity of the factory further from 1500 tonnes to 1750 tonnes per day.

14. Learned Counsel for the Union of India further submits that petitioner, i.e. Bishnu Sugar Mills Ltd was examined with reference to this criteria and it appears that the mills was rightly placed in schedule V as it justified the following condition laid down for placement for sugar factory in schedule V. It is further contention for the Union of India that the petitioner was set up before 01.10.1955 and it has achieved a cane crushing capacity which is not less than 1250 tons as per day. It is the submission of the Union of India that vide letter dated 13th April 1973 and another letter dated 20st October 1974 Bishnu Sugar Mills informed that they have achieved crushing capacity of 1500 tons cane per day at their factory at Harkhuya and intended to extent up to 1750 per day and they made request to the concerned authority to extent the crushing capacity of the factory further from 1550 tons to 1750 tons per day.

15. Learned Counsel for the Union of India submits that the petitioner was rightful placed in schedule V category as they have

the capacity to crush cane more than 1250 tons per day. He further submits that the writ petitions are devoid of merit and they are liable to be dismissed.

16. Having heard the Learned Counsel for the parties it appears that the justification of placing the petitioners factory in schedule V category of factories (efficient unit factories) is under challenge before this court. It is admitted position of law that is different High Courts including before the Supreme Courts same issues were raised wherein the decision of **Godabari Sugar mills and Anr. Vs. Union of India and Ors.** delivered on 03.10.2001 relying upon earlier judgment of **Godabari Sugar mills and Anr. Vs. Union of India and Ors.** by the Hon'ble Division Bench of Delhi High Court has been upheld. It has been decided by the division bench that the criteria applied by the Union of India for placing petitioners factory in schedule V in place of schedule VI was not correct. The capacity for crushing sugarcane per day is to be considered for a particular factory of its licensed capacity. Moreover, if the respondents Union of India wanted to place the petitioners factory in schedule V. They should give notice to the

petitioner and also indicate the reason why the petitioner is being placed in schedule V.

17. It further appears that the Union of India in their affidavit in opposition has placed two representations of the petitioners wherein they have prayed for expansion of their crushing capacity from 1550 tons to 1750 tons per day. Both the representations (as annexed with the affidavit in opposition of Union of India) had not considered by Union of India and were turned down; now to justify their act and action, Union of India cannot place reliance upon them. Those representations, which they actually, not considered at the relevant point of time. The documents, i.e. representation dated April 13, 1973 and October 20, 1974, by the petitioners cannot be used by Union of India while they themselves not considered them to be correct. Union of India cannot use those representations for the purpose of placing the petitioners factory in schedule V.

18. In my view the act and action of Union of India for placing the petitioners factory in schedule V is erroneous. The law laid down in the case of **Godabari Mills Limited (supra)** holds field; thus the principle that crushing capacity of a factory should be

considered as its licensed capacity is taken to be correct in its specific perspective. Therefore following decisions of **Godabari Mills Ltd. (supra)**, the instant writ petitions are considered and allowed.

19. The placement of petitioners in schedule V is turned down. Relevant Price Determination Orders for respective years to that effect, are hereby quashed.

20. Petitioners are entitled to the price of levy sugar supplied by it after coming into force of the said Price Determination Order for that particular period.

It is clarified that the placement of petitioner in schedule V is appears to be illegal in terms of decision of **Godabari Mills Ltd. (supra)**.

21. In case of respondent/Union of India went to place the petitioner in schedule V, they can do so, after giving notice to the petitioner and after giving reasonable opportunity of hearing to the petitioner to that effect.

22. Under the above observation writ petitions are disposed of. Connected applications, if any, are disposed of.

23. Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)