

**Ganesh Sugar Works and others v. State of Haryana and others**  
**(D. V. Sehgal, J.)**

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not willing to go on deputation, the said order is violative of rule 10.2 (a) of the Rules.

(10) In view of the above discussion, this petition is allowed, the impugned orders Annexures P. 4 and P. 7, dated 3rd August, 1985 and 9th September, 1985, respectively, are quashed. There shall, however, be no order as to costs.

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H.S.B.

*Before D. V. Sehgal, J.*

GANESH SUGAR WORKS and others,—*Petitioners.*

*versus*

STATE OF HARYANA and others,—*Respondents.*

*Civil Writ Petition No. 5483 of 1985.*

January 24, 1986.

*Constitution of India, 1950—Article 19(1)(g)—Essential Commodities Act, 1955—Section 2(e)—Haryana Sugarcane (Control) Order 1965—Clause 6—Haryana Khandsari Sugar Manufacturers Licensing Order, 1972—Clauses 3(1) and 3(3)(c)—Haryana Gur Manufacturing Licensing Order, 1972—Clause 3—Licenses granted to Khandsari unit for a number of years—Khandsari unit as also Gur manufacturers subsequently prohibited from manufacturing Khandsari or Gur—Monopoly to crush sugarcane and manufacture sugar reserved to the various sugar mills—Complete prohibition so imposed on the manufacture of Khandsari and Gur—Whether valid.*

Held, that one of the important considerations to hold a restriction to be reasonable within the meaning of Article 19 of the Constitution of India, 1950, is that it should be in the public interest and should be imposed by striking a just balance between deprivation of right and danger of evil sought to be avoided. It cannot be gainsaid that Khandsari and Gur are the sweetening agents consumed by a majority of rural and poor populace of consumers in the country, may be because of habit or because of the reason that they cannot afford the cost of sugar for their consumption. If khandsari and Gur are not at all produced during the crushing season, there would certainly be a famine of sweetening agent for the poor populace. It

may be highlighted that Khandsari and Gur are as essential commodities for the poor consumers as sugar is for others. In fact, the definition of sugar given in section 2(e) of the Essential Commodities Act, 1955, includes Khandsari sugar. It is the duty of the States to maintain a reasonable balance between the various sweetening agents as far as sugarcane supply is concerned. As such the complete ban imposed on the manufacturing of Khandsari and Gur and crushing of sugarcane by such units by virtue of clause 3(1) and clause 3(3)(c) of the Haryana Khandsari Sugar and Manufacturing Licensing Order, 1972 and clause (3) of the Haryana Gur and Manufacturing Licensing Order, 1972 and Clause 6 of the Haryana Sugarcane (Control) Order, 1965, is liable to be struck down as not valid. (Para 31).

*Writ Petition under Articles 226/227 of the Constitution of India praying that :—*

- (i) complete record of the case be summoned;
- (ii) a Writ in the nature of Certiorari quashing the order dated 18th October, 1985 Annexure P/3, by Respondent No. 2 refusing to renew Khandsari licence so far as Petitioner No. 1 is concerned and also quashing the identical orders issued in respect of Petitioners 2 to 13, be issued;
- (iii) a Writ in the nature of Mandamus directing the Respondents to renew the Khandsari licence in respect of the Petitioners for the year 1985-86, be issued;
- (iv) the Sugarcane (Control) Order, 1966 and the Haryana Khandsari Sugar Manufacturers Licensing Order, 1972 be declared ultra vires the provision of Section 3 of the Essential Commodities Act, 1955;
- (v) clause 3(3)(c) of the Licensing Order be struck down as violative of Articles 14 and 19(1)(g) of the Constitution of India;
- (vi) It is also prayed that during the pendency of the Writ Petition, the Petitioners be permitted to operate their Khandsari Units;
- (vii) this Hon'ble Court may also grant any other relief deemed just and fit in the peculiar circumstances of the case;
- (viii) costs of the Petition be also awarded;
- (ix) condition regarding filing of certified copies of the Annexures may kindly be dispensed with;
- (x) condition regarding service of advance copies of the Writ Petition on the Respondent be dispensed with.

Ganesh Sugar Works and others v. State of Haryana and others  
(D. V. Sehgal, J.)

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Civil Misc. No. 3535 of 1985.

*Application under Section 151 of the Code of Civil Procedure praying that during the pendency of the Writ Petition the Petitioner may be permitted to crush the sugarcane for manufacturing Khandsari sugar.*

Kuldip Singh, Senior Advocate with G. C. Gupta, Advocate, for the Petitioner.

Hira Lal Sibal, A. G. (H), with Jagdev Sharma, D.A.G. (H) and Nirmal Yadav, A.A.G. (H), for the Respondents.

JUDGMENT

D. V. Sehgal, J.

(1) I propose to dispose of Civil Writ Petitions Nos. 5587 and 5588 of 1955 also by this judgment as common questions of law are involved therein.

(2) For facility of reference, facts mentioned in C.W.P. No. 5483 of 1985 may be stated here as under.

The petitioners have established Khandsari units at various places in the State of Haryana during the year 1960 to 1980 by making capital investments ranging from rupees one lac to Rs. 13 lacs. The number of workers employed by them ranges from 30 to 200. They have given details in this regard in a statement Annexure P. 1. On coming into force of the Haryana Khandsari Sugar Manufacturers' Licensing Order, 1972 (hereinafter called 'the Khandsari Licensing Order'), they have been granted licences to manufacture Khandsari sugar. The licences were being renewed from year to year without any let or hindrance. Petitioners Nos. 1 to 13 deposited the renewal fee under the Khandsari Licensing Order and requested respondent No. 2 for the renewal of their licences for the year 1985-86. Their applications were, however, rejected by the Cane Commissioner, respondent No. 2. A copy of letter dated 18th October, 1985,—vide which renewal of licence in favour of petitioner No. 1 was declined is Annexure P. 3. Similar and identical orders were issued in response to the applications for renewal made by petitioners Nos. 2 to 13. Petitioners Nos. 14 and 15 were not allowed to deposit the licence fee on the pretext that no licence of any Khandsari unit was to be renewed. The petitioners have prayed for a writ in the nature

of *certiorari* quashing the order Annexure P. 3 refusing renewal of licence so far as petitioner No. 1 is concerned and also for quashing the identical orders issued in respect of petitioners Nos. 2 to 13. They have also sought a writ in the nature of *mandamus* directing the respondents to renew the licences of the petitioners for the year 1985-86. A further prayer is made that the Sugarcane (Control) Order, 1966 (hereinafter called 'the Control Order'), and the Khandsari Licensing Order which have been promulgated by the State of Haryana by exercising powers delegated to it under the Control Order, be declared *ultra vires* the provisions of section 3 of the Essential Commodities Act, 1955 (hereinafter called 'the Act'), and particularly clause 3(3)(c) of the Khandsari Licensing Order be struck down as violative of Articles 14 and 19(1)(g) of the Constitution of India.

(3) The respondents in their written statement have countered the claim of the petitioners. They have asserted that renewal of licences to the petitioners has been rightly declined, as their Khandsari units are located in the assigned areas of the sugar mills of the State of Haryana. Sugarcane was not available in adequate quantity for the sugar mills. As such, by exercise of power under Clause 3(3)(c) of the Khandsari Licensing Order, the renewal of licences of the petitioners has been declined.

(4) Mr. Kuldip Singh, the learned counsel for the petitioners, has contended that before promulgating the Control Order under section 3 of the Act, the Central Government was required to form an opinion that it was necessary or expedient to issue the said Control order for maintaining or increasing the supplies of sugarcane. It was a condition precedent and it was only when after the said condition of formation of opinion was satisfied that the power to issue regulatory order, in the present case, the Control Order could be exercised by the Central Government. He contended that before promulgating the Control Order, the Central Government did not form any such opinion and as such the same was *ultra vires* the provisions of the Act. For the same reason, he contended that the Khandsari Licensing Order, which has been promulgated by the State of Haryana by virtue of powers conferred on it under the Control Order is liable to be struck down.

The second contention of Mr. Kuldip Singh is that there was no justification to completely prohibit the functioning of the Khandsari units of the petitioners. A State level policy decision was taken not to renew the licences of all the Khandsari units in the State of

Ganesh Sugar Works and others v. State of Haryana and others  
(D. V. Sehgal, J.)

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Haryana. The petitioners have been totally wiped out of their business of manufacturing Khandsari. He contended that this measure has been taken to ensure supply of sugarcane to 8 sugar mills in the State. There are in all 72 Khandsari units in the State. In order to keep 8 sugar mills working, 72 Khandsari units, including those of the petitioners, have been totally stopped from functioning. This, according to him, is in violation of the petitioners' Fundamental Right to carry on business under Article 19(1)(g) of the Constitution. He further contended that their business has been stopped only with a view to create monopoly of manufacturing sugar by the eight sugar mills in the State. They, as also the sugar mills, manufacture sugar belonging to the same class and fall in the same category. Stopping their business completely and creating monopoly in favour of the sugar mills is arbitrary, discriminatory and violative of Article 14 of the Constitution.

(5) His next contention is that before refusing renewal of their licences for the year 1985-86, the petitioners have not been given any opportunity of hearing. On facts, he has stated that last year the total quantity of sugar produced by the sugar mills in the State of Haryana was 1.37 lac tonnes. This year, even according to the assertion of the State Government, the production of sugar in the State would go up to 1.50 lac tonnes. Therefore, there was no fall in the production of sugar and as such there was no ground for refusing renewal of licences of their Khandsari units.

(6) It may here be mentioned that C.W.P. Nos. 5587 and 5588 of 1985 have been filed on behalf of Gur Manufacturers. Their contention is that the Haryana Gur Manufacturers' Licensing Order, 1972 (hereinafter called 'the Gur Licensing Order'), was promulgated by the State Government by virtue of powers delegated to it under the Control Order. However, at no stage since its promulgation were the petitioners ever required to secure licences under Clause 3 thereof. Besides adopting the arguments of Mr. Kuldip Singh noticed above, Mr. G. S. Sandhu, the learned counsel for the Gur Manufacturers (petitioners) asserted that although the Gur Licensing Order was kept in abeyance since its promulgation, all of a sudden in the current year they have been ordered not to manufacture Gur or else they would be penalised for contravention of the Gur Licensing Order. No particular order passed by the Cane Commissioner respondent No. 2 was attached with the writ petition. However, at the

time of hearing, a copy of the notice bearing No. 1058 dated 4th November, 1985 from the Assistant Cane Commissioner, Shahbad, addressed to one of the petitioners was produced before me. It is admitted on both sides that similar notices were issued to the other Gur manufacturer petitioners also.

(7) Mr. H. L. Sibal, the learned Advocate-General, Haryana, appearing for the respondents, countered the aforesaid contentions. He submitted that the Control Order has been held to be valid and within the vires of the Act by their Lordships of the Supreme Court in *M/s Laxmi Khandsari etc. etc. v. State of U.P. and others etc. etc.* (1) and its validity could not be re-examined on any ground, much less on the ground of want of formation of opinion so as to invalidate it. He, however, contended that it was after due formation of opinion that the Control Order was passed and since the Khandsari and Gur Licensing Orders have been promulgated by the State by virtue of the powers delegated to it by the Control Order, the same were also valid. He further submitted that there were in all 72 Khandsari units in the State of Haryana. Fifty-four of them were located within the areas assigned to different sugar mills in the State, which are 8 in number. Renewal of licences to these 54 Khandsari units alone was declined. The licences of the remaining 18 Khandsari units have been renewed. Renewal of licences in respect of 54 Khandsari units, which include the units of the petitioners, have been refused for the year 1985-86 only. This has been done so as to tide over the acute shortage of sugarcane required for crushing in the sugar mills. He did not rule out the possibility that in the years to come if the shortage of sugarcane for the sugar mills occurs licences of the petitioners and other Khandsari units may not be renewed. He contended that sugar is an essential commodity, which is the basic need of the consumers and the society. It is a scarce commodity. Sugar mills have been asked to work to their full capacity so as to produce more sugar to meet the scarcity. According to him, to produce this essential commodity sugarcane grown in the assigned areas could be diverted for crushing to the sugar mills. The petitioners have been denied renewal of licences so that they could not divert the sugarcane from the assigned areas for crushing and production of Khandsari or Gur. According to him, the action of the State was fully justified and in conformity with the Directive principles of State policy enshrined in Article 39(b) and (c) of the Constitution. He submitted that although it was not necessary to

(1) A.I.R. 19 S.C. 873.

Ganesh Sugar Works and others v. State of Haryana and others  
(D. V. Sehgal, J.)

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afford any opportunity of hearing to the petitioners before renewal of their licences was declined, their representatives were heard when earlier decision was taken not to renew the licences of the Khandsari units in the assigned areas. He brought to my notice that the contention of want of opportunity of hearing was negated by the Supreme Court in *M/s Laxmi Khandsari's case* (supra).

(8) On facts Mr. Sibal controverted the assertion of Mr. Kuldip Singh that there would be rise in the production of sugar by the sugar mills in the State during the current crushing season. He stated that in the year 1982-83, five sugar mills, which were functioning in the State during that year, produced 1.82 lac tonnes of sugar. The number of sugar mills has now increased to 8. In spite of all this, the estimated production of sugar during the current crushing season is 1.50 lac tonnes only. Another contention raised by the learned counsel is that the Gur Licensing Order was very much in force in the State of Haryana since its promulgation. Simply because no penal action was taken against the Gur manufacturers for violation of the Gur Licensing Order, they cannot contend that its operation was kept in abeyance nor can they argue that the current crushing season was not the opportune time for rigidly enforcing the provisions of the Gur Licensing Order.

(9) To appreciate the rival contentions of the parties, I deem it proper to dilate on the different pieces of legislation—Control and Licensing Orders.

(10) The Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953 (hereinafter called 'the Punjab Act'), came into force on 2nd November, 1953 with an object to regulate the purchase and supply of sugarcane required for use in the sugar mills in the erstwhile State of Punjab. A Sugarcane Control Board (hereinafter called 'the Board') was constituted and a Cane Commissioner was appointed under sections 3 and 4 of the Punjab Act. To ensure supply of sugarcane to the sugar mills, it was *inter alia*, provided that the Cane Commissioner would require the occupier of a sugar mill to submit to him on or before a specified date an estimate of the quantity of cane intended to be purchased for his mill during any particular season. Survey of the area in the State where sugarcane is grown is to be got carried out by an officer authorised by the Cane Commissioner so as to ascertain the quantity of sugarcane estimated to be

produced in the area and particular area is to be assigned for the purchase of sugarcane by the occupier of a sugar mill. Various other provisions are also contained in the Punjab Act for purchase and supply of sugarcane, to which reference is not necessary for adjudicating upon the present dispute.

(11) The Essential Commodities Act, 1955, received the assent of the President on 1st April, 1955. The object of the Act was to provide in the interest of the general public, for the control of the production, supply and distribution of, and trade and commerce, in certain commodities, which under the provisions of the Act were to be declared "essential commodities." Section 2(b) of the Act defines "food-crops" to include crops of sugarcane. "Sugar" is defined in section 2(e) of the Act as under:—

"2(e): 'Sugar' means—

- (i) any form of sugar containing more than ninety per cent of sucrose, including sugarcandy;
- (ii) khandsari sugar or bura or crushed sugar or any sugar in crystalline or powdered form;
- (iii) sugar in process in vacuum pan sugar factory or raw sugar produced therein."

(12) Thus, Khandsari sugar and the sugar manufactured by the vacuum pan sugar factories is 'sugar' within the meaning of the Act. Section 3(1) of the Act provides that if the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, or for securing any essential commodity for the defence of India or the efficient conduct of military operations, it may be order, provide for regulating or prohibiting the production supply and distribution thereof and trade and commerce therein. Sub-section (2)(a) and (c) of the said section *inter alia*, provide that without prejudice to the generality of the powers conferred by sub-section (1), an order made thereunder may provide for regulating by licences, permits or otherwise the production or manufacture of any essential commodity; and for controlling the price at which any essential commodity may be bought or sold. Section 5 of the Act provides that the Central Government may, by notified order; direct that the power to make



Ganesh Sugar Works and others v. State of Haryana and others  
(D. V. Sehgal, J.)

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orders or issue notifications under section 3 shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exerciseable also by, *inter alia*, such State Government or such officer or authority subordinate to a State Government, as may be specified in the direction. Section 6 of the Act lays down that any order made under section 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than the Act or any instrument having effect by virtue of any enactment other than the Act.

(13) It was in exercise of the powers conferred by section 3 of the Act that the Central Government promulgated the Sugarcane (Control) Order, 1966 on 16th July, 1966 (hereinafter called 'the Control Order'). Some of the provisions contained in the Control Order, it may be noticed, with regard to securing supply of sugarcane for crushing in the sugar mills, are analogous to the provisions contained in the Punjab Act, though the provisions of the Control Order are much more effective and efficacious. Clause 2(j) thereof defines 'reserved area' to mean any area where sugarcane is grown and reserved for a factory under sub-clause (1)(a) of clause 6 of the Control Order. Thus, 'reserved area' in the Control Order and 'assigned area' in the Punjab Act define the area for the same purpose. Clause 6 of the Control Order, *inter-alia*, provides that the Central Government may, by order notified in the Official Gazette, 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; determine the quantity of sugarcane which a factory will require for crushing during any year; fix, with respect to any specified grower or sugarcane growers generally in a reserved area, the quantity or percentage of sugarcane grown by such grower or growers, as the case may be, which each such grower by himself or, if he is a member of a co-operative society of sugarcane growers operating in the reserved area, through such society, shall supply to the factory concerned; direct a sugarcane grower or a sugarcane growers' co-operative society, supplying sugarcane to a factory, and the factory concerned to enter into an agreement to supply or purchase, as the case may be, the quantity of sugarcane fixed under paragraph (e). Clause 6(e) of the Control Order provides that the Central Government may, by order notified in the Official Gazette direct that no Gur (jaggery) or Khandsari 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 7 confers power on the Central Government to licence power crushers, Khandsari units, crushers and to regulate the purchase of sugarcane. Sub-clause (b) thereof, *inter-alia* provides as under :—

“The Central Government may, by order, direct that in a reserved area—

- (i) no sugarcane shall be purchased for crushing by a power crusher;
- (ii) no sugarcane or sugarcane juice shall be purchased for crushing or for manufacture of Gur, Shakkar, Gul, jaggery, rab or Khandsari sugar, as the case may be, by a crusher not belonging to a grower or a body of growers of sugarcane or by a Khandsari unit in the area; except under and in accordance with a permit issued by the Central Government in that behalf.”

(14) Clause 11, *inter alia*, provides that the Central Government may, by notification in the Official Gazette, direct that all or any of the powers conferred upon it by this order, shall, subject to such restrictions, exceptions and conditions, if any, as may be specified in the direction, be exercisable also by a State Government or any officer or authority of a State Government. It further provides that where all or any of the powers conferred upon the Central Government by this order have been delegated to any authority of a State Government, every order or direction issued by such authority in exercise of that power may be amended, varied or rescinded by State Government whom the officer or authority is subordinate, either *suo motu*, or on application made within a period of thirty days from the date of the order or direction. There is a proviso to clause 11(2) to the effect that no order revoking a licence or a permit issued to a person shall be made without giving such person an opportunity to make a representation.

(15) In exercise of the powers conferred by Clause 6(1)(e) of the Control Order read with the Government of India, Ministry of Food, Agriculture, Community Development and Co-operative (Department of Food) Notification, dated 16th July, 1966, the Governor of Haryana made the Haryana Khandsari Sugar Manufacturers' Licensing Order, 1972 which was notified on 4th December, 1972

Ganesh Sugar Works and others v. State of Haryana and others  
(D. V. Sehgal, J.)

Clause 3(1) and 3(c), *inter alia*, provide that no manufacturer (of Khandsari sugar) shall without obtaining from the Licensing Authority a licence in the form prescribed in Schedule-I, carry on or undertake any process connected with the manufacture of Khandsari sugar by means of a power crusher, belt or centrifugal. 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 *ensure adequate supplies of sugarcane to vacuum pan sugar factory.*

(16) On similar lines, the Haryana Gur Manufacturers' Licensing Order, 1972 was notified on 4th December, 1972. Clause 3 provides that no manufacturer shall without obtaining a licence from the Licensing Authority in the prescribed form carry on or undertake any process connected with the manufacture of Gur, by means of a power crusher. Sub-clause (8) lays down, *inter alia*, that an application for the grant or renewal of a licence shall not be rejected except in a case where the Licensing Authority is of the opinion that it is necessary or expedient so to do in the public interest with a view to *ensure adequate supplies of sugarcane to a vacuum pan sugar factory.*

(17) Now, I come to the contentions of the learned counsel. It was not disputed before me that the legality and the constitutional validity of the Control Order was upheld by the Supreme Court in *M/s. Laxmi Khandsari's case* (supra), after a threadbare discussion of various legal and factual aspects. I, therefore, cannot entertain any contention couched with reasoning which is aimed at persuading me to take a view contrary to that of the Supreme Court in the above mentioned case and to hold that the Control Order is unconstitutional. I would prefer to be guided by the golden rule to which Lord Denning MR adverted in *Harper v. National Coal Board* (2), in the following words:

“One thing is clear. We can only accept a line of reasoning which supports the actual decision of the House of Lords. By no possibility can we accept any reasoning which would show the decision itself to be wrong. The second proposition

is that, if we can discover the reasoning on which the majority based their decision, then we should accept that as binding on us. The third proposition is that, if we can discover the reasoning on which the minority base their decision, we should reject it. It must be wrong because it led them to the wrong result. The fourth proposition is that if we cannot discover the reasoning on which the majority based their decision we are not bound by it. We are free to adopt any reasoning which appears to us to be correct, so long as it supports the actual decision of the House."

(18) Therefore, the contentions advanced by the learned counsel for the petitioners to question the legality and constitutional validity of the Control Order have to be rejected outright. For the same reason, his attack on the Khandsari Licensing Order and the Gur Licensing Order, which emanate from the powers conferred on the State Government by the Control Order and are in conformity with the provisions thereof has also to be repelled.

(19) As a consequence, all that is to be seen is whether the orders of the Cane Commissioner refusing to renew the licences of the petitioners for the entire crushing season of the year 1985-86 are violative of Articles 14 and 19(1)(g) of the Constitution, or are arbitrary and *mala fide* and aimed at creating monopoly for crushing of sugarcane in favour of the sugar mills depriving the petitioners of their business of manufacturing Khandsari and Gur, which they were carrying on for a number of years.

(20) The learned Advocate-General, Haryana, with a view to repel the attack on the impugned action of the respondents has once again placed reliance on the judgment of their Lordships of the Supreme Court in *M/s. Laxmi Khandsari's* case (supra). He submits that similar argument was put forward in that case and it was contended that the order impugned therein imposed unreasonable restrictions on the rights of the petitioners under Article 19(1)(g) of the Constitution to carry on their trade, namely, production of Khandsari. A subsidiary argument for pressing the same contention was also raised that the impugned Notification intended to create a monopoly in favour of the sugar mills at the cost of the crushers owned by the petitioners and was, therefore, violative not only of Article 19(1)(g) but also of Article 14 of the Constitution. As in the present case, an additional argument was raised before the Supreme Court that

Ganesh Sugar Works and others v. State of Haryana and others  
(D. V. Sehgal, J.)

there was no rational nexus between the prohibition contained in the Notification impugned before it preventing the crushers of the petitioners from working and the object sought to be achieved by it and that the State had selected the petitioners for hostile discrimination between one segment and another of persons engaged in the purchase of sugarcane, its sale and production of sugar without striking a just balance between the manufacturers of Gur, Khandsari and sugar. The Supreme Court had repelled these contentions and was of the definite view that the order impugned before it was not violative of Articles 19(1)(g) and 14 of the Constitution, since neither it amounted to unreasonable restrictions on the carrying on of business by the petitioners nor was the impugned Notification aimed at creating a monopoly in favour of the sugar mills. Although in this case the impugned Notification limited the ban to work power crushers only for short period of 1½ months from October 9, 1980 to December 1, 1980, it was observed that restrictions may be partial, complete, permanent or temporary but they must bear a close nexus with the object in the interest of which they are imposed. Reliance was placed on *State of Madras v. V. G. Row* (3), which judgment the Supreme Court justly regarded as the *locus classicus* on the question as to what are the reasonable restrictions, where Patanjali Sastri, C.J., speaking for the Court observed as follows:—

“It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be supplied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought etc. to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the Judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and

(3) A.I.R. 1952 S.C. 196.

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sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorising the imposition of the restrictions, considered them to be reasonable.”

(21) The restriction was justified as it had been imposed in order to relieve the sugar famine by boosting the production of sugar by the mills. Relying on *The State of Rajasthan v. Nath Mal* (4), it was observed that even the freezing of stocks of foodgrains with a view to securing their equitable distribution and availability was a reasonable restriction. Even if by seizing the food stocks the right of a citizen to trade in foodgrains was seriously impaired and hampered yet such a State action was justified on the ground of public interest. Reliance was also placed on *Prag Ice & Oil Mills v. Union of India* (5), wherein it was held that all the tests of validity of the impugned Control Order are to be found in section 3 of the Act, which makes necessity of expediency of a control order for the purpose of maintaining or increasing supplies of an essential commodity or for securing its equitable distribution at fair prices the criteria of validity. It is the interest of the consumer and not of the producer which is the determining factor in applying any objective tests at any particular time. The learned Advocate-General brought to my notice that after the impugned orders refusing the renewal of licences to the petitioners had been passed, the Sugarcane control Board reviewed the situation in a meeting held on 1st January, 1986. Since the objective of adequate availability of sugarcane for the sugar mills had not yet been achieved it was decided to keep in force the impugned orders. The said Board is likely to review the position once again by the end of January, 1986. The petitioners had been heard in the Board's meeting through their representatives. Therefore, they ought not to have rushed to this Court to invoke its extraordinary jurisdiction through the present writ petitions. He invited my attention to the following observations of their Lordships of the Supreme Court in *Prag Ice & Oil Mills's* case (supra), which have been cited with approval in *M/s. Laxmi Khandsari's* case (supra):—

“Before closing, we would like to mention that the petitioners rushed to this Court too precipitately on the heels of the Price Control Order. Thereby they deprived themselves

(4) A.I.R. 1954 S.C. 307.

(5) A.I.R. 1978 S.C. 1296.

Ganesh Sugar Works and others v. State of Haryana and others  
(D. V. Sehgal, J.)

of an opportunity to show that in actual fact, the order causes them irreparable prejudice. Instead they were driven through their ill-thought haste to rely on speculative hypotheses in order to buttress their grievance that their right to property and the right to do trade was gone or was substantially affected. A little more patience, which could have been utilised to observe how the experiment functioned, might have paid better dividends."

Mr. Sibal also invited my attention to the following observations of their Lordships of the Supreme Court in *M/s. Laxmi Khandsari's case* (supra):—

"Another important argument advanced by the Attorney-General which has impressed us most is one resulting from the use by the mills of the hydraulic process as distinguished from the open pan process employed by Khandsari units for the production of sugar. The consequence is the recovery of sugar from sugarcane in the case of Khandsari units run by power crushers is between 4 to 6 per cent whereas in the case of sugar factories it ranges between 9½ to 11½ per cent. Thus, the overall position is that the utilisation of sugarcane by the mills is double than by the crushers and if the crushers are not able to produce more than the existing 4 to 6 per cent, half of the total quantity of sugarcane supplied to them goes waste which, if utilised by the factories, would have served for production of more sugar."

(22) He, thus, asserted that the sugar mills extracted almost double the quantity of sugar from the sugarcane crushed in the mills than the quantity of Khandsari or Gur produced by crushing sugarcane by the petitioners. The Supreme Court had thus held that there is a solid distinction between the two processes of manufacture followed by the sugar mills and the crushers producing Khandsari or Gur, which is a very rational distinction and places the sugar mills in a different class and also provides a reasonable nexus between the restrictions imposed on the crushers and the object sought to be achieved.

(23) As to the contention of the petitioners that they ought to have been afforded an opportunity of hearing before renewal of

licences for the current year was declined, the learned Advocate General submitted that this aspect was also examined in *M/s. Laxmi Khandsari's case* (supra) and it was held that the impugned order was passed really to cover an emergent situation so as to meet the national crisis involving the availability or distribution of an essential commodity, which made it necessary to restrict or control the business carried on by the petitioners. There was an acute shortage of sugar which was not made available to the consumers at reasonable rates and the situation caused serious dissatisfaction among the people. Nothing short of immediate and emergent measures taken to solve this crisis would have eased the situation. If hearing was to be given to so many owners of power crushers it would have completely defeated and frustrated the very object not only of the impugned Notification but also of the Act and created complications which might have resulted in a further deterioration of an already serious situation. He further contended that before the policy decision not to renew the petitioners' licences for the current year was taken, their representatives were invited and were present in the meeting of the Board which was held on 15th November, 1985.

(24) Mr. Kuldip Singh, the learned counsel for the petitioners, distinguished the law laid down by the Supreme Court in *M/s. Laxmi Khandsari's case* (supra). He contended that while in the present case the renewal of licences of the petitioners has been refused for the entire crushing season of the year 1985-86, thus, throwing them altogether out of business the restriction imposed in *M/s. Laxmi Khandsari's case* (supra) was for a limited period of 1½ months only. Further more, the order impugned before the Supreme Court in that case had been passed to tide over a serious sugar famine which was faced by the country. No such situation existed nor any such plea has been raised by the respondents in the present case. In fact, what is sought to be achieved is to provide more sugarcane to the mills. To achieve such an object complete ban on their business could not be justified. He contended that had the Cane Commissioner and the Board taken into consideration well in time the demand of sugarcane by the sugar mills and timely survey was conducted, more area under sugarcane crop than what has been declared as reserved/ assigned for the different sugar mills, could have been so assigned or reserved and the object sought to be achieved by banning the business of the petitioners could have been conveniently achieved by a resort to the provisions of the Punjab Act and Clause 6 of the



Ganesh Sugar Works and others v. State of Haryana and others  
(D. V. Sehgal, J.)

Control Order. Depending mainly for his contention on *M/s Laxmi Khandsari's case* (supra), he submitted that the restriction on trade must be in public interest and should be imposed by striking a just balance between the deprivation of a right and danger or evil sought to be avoided. No doctrinaire approach should be made. Care should be taken to see that the real purpose which is sought to be achieved by restricting the rights of the citizens is subserved. He contended that as held in *V. G. Row's case* (supra), an important test to see reasonableness of restrictions imposed on trade or business is that the restriction should not be excessive or arbitrary and the Court should examine the direct and immediate impact of the restrictions on the rights of the citizens and determine if the restrictions are in large public interest. He contended that overwhelming population in the rural areas in the State of Haryana consume Gur and Khandsari and not sugar which is costlier and the poor rural population cannot afford it. By imposing complete ban on the production of Gur and Khandsari for the current year through the impugned orders an essential commodity meant for consumption of the rural population would become scarce. This would not subserve the object which is sought to be achieved by section 3 of the Act. He emphasised that one of the factors which had weighed with the Supreme Court in upholding the restriction imposed through the impugned notification in *M/s. Laxmi Khandsari's case* (supra), was that it was for a temporary period of 1½ month only. In the present case, the restriction on the functioning of Khandsari units is for the entire crushing season of 1985-86.

(25) While deliberating on the above rival contentions of the learned counsel, I also examined the record which was produced before me by the Cane Commissioner who was present in the Court all through for two days when the matter was being argued. A few admitted facts must first be taken into account. It is only 60 per cent of the total area under the sugarcane crop in the State of Haryana which is reserved/assigned for the different sugar mills in the State by resort to the provisions of the Punjab Act and the Control Order. In this manner, the remaining 40 per cent area under sugarcane crop does not ensure to consumption of sugarcane in the sugar mills. There are in all 72 Khandsari units in the State. Out of them, 54 units are located within the reserved/assigned area and, 18 units are in the unassigned/unreserved area. All the Khandsari units in the State consume 5 to 10 per cent of the entire sugarcane production in a given crushing season. Fifty to sixty per cent of the sugarcane is consumed in the State for the manufacture of Gur, Shakkar, Rab,

etc. This includes consumption by the sugarcane powers themselves for manufacture of Gur, etc., for domestic consumption or otherwise. Earlier, there were 5 sugar mills established in the State. Three more sugar mills have recently been set up and now there are in all 8 sugar mills in operation in the State.

(26) The position that has emerged from the perusal of the record is as follows:

Letter No. 4-7/84-Spy (D. II), dated 14th September, 1984 from the Government of India, Ministry of Food & Civil Supplies (Department of Food), was addressed 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 brought out in this letter that sugar production had registered a sharp decline from 82.32 lac tonnes in the earlier year to about 59 lac tonnes in 1983-84. Though the shortfall was primarily attributable to natural factors, like drought, etc., some diversion of sugarcane from factory areas to manufacturers of other sweetening agents like Gur, Khandsari, etc., had also been reported. It had consequently to be ensured, through steps available, that the production of sugar did not lag behind the requirement. *A reasonable balance between various sweetening agents had to be maintained as far as sugarcane supply was concerned.* The following measure, *inter alia*, which had been suggested to the State Governments in the past were also required to be implemented with added vigour:—

- (i) To avoid unhealthy competition among the manufacturers of sweetening agents with a view to mitigating hardship to any user, but at the same time to ensure regular and adequate supplies of cane to the sugar factories;
- (ii) to clearly demarcate reserved areas for each of the vacuum pan sugar factories, taking into account its size and cane requirements-cum-crushing capacity, and also the requirements of Khandsari units already licensed and functioning in the area of the sugar factory. It need not necessarily be restricted to any uniform radius of 16 Kms., as appears to have been the practice in the past;
- (iii) ... ..
- (iv) ... ..

Ganesh Sugar Works and others v. State of Haryana and others  
(D. V. Sehgal, J.)

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- (v) not to grant fresh licences to Khandsari units in the reserved areas of sugar factories, and to the extent possible even to encourage, by all possible means, the existing Khandsari unit in reserved areas to shift out.

(27) It is not clear what steps were taken by the Board in pursuance of this letter. It is, however, evident that the licences of all the Khandsari units within the reserved areas of the sugar mills were renewed for the crushing season of the year 1984-85. Further, no steps were taken to require the Gur manufacturers to secure licences under Clause 3 of the Gur Licensing Order or else to restrain them from manufacturing Gur. Before the commencement of the crushing season in the year 1985-86 the Government of India, Ministry of Food and Supplies issued yet another letter No. 4-11/85-SPY (D. II), dated 4th September, 1985, addressed to the Secretaries of the Departments dealing with sugarcane, Haryana, Punjab and Bihar re-emphasising the need for taking every possible measure to augment sugar production in the ensuing season and to check diversion of sugarcane to manufacture Gur and Khandsari by inviting their attention to the measures suggested in the letter, dated 14th September, 1984. Besides, it was suggested that an additional measure which might be considered suitable according to local conditions, e.g., *late starting of crushing operations by Khandsari/power crushers, etc.*, should also be considered.

(28) A meeting of the Board was held on 15th November, 1985 under the Chairmanship of the Chief Minister of Haryana. Sugarcane growing areas in the State ranging from 15 Kms radius to 32 Kms. radius were assigned to the respective 8 sugar mills in the State. The following dates were given by the representatives of the respective sugar mills for commencement of crushing during the season 1985-86:—

(1) Yamunanagar	...	26th November, 1985.
(2) Shahabad	...	18th November, 1985.
(3) Sonapat	...	18th November, 1985.
(4) Karnal	...	27th November, 1985.
(5) Panipat	...	21st November, 1985.
(6) Rohtak	...	19th November, 1985.

- |            |     |                      |
|------------|-----|----------------------|
| (7) Palwal | ... | 21st November, 1985. |
| (8) Jind   | ... | 24th November, 1985. |

(29) The Chairman of the Board desired that the mills should work for maximum period and they should ensure early commencement of crushing and timely payment of cane price to the farmers. The Board also approved the action of the Cane Commissioner for not renewing the licences of Khandsari units in the assigned areas of the sugar mills in public interest in view of "very low availability of cane for vacuum pan sugar mills in the State." It was, however, desired by the Board that the licences of all Khandsari units working outside the assigned areas be issued/renewed immediately. It may be noted that as per proceedings, two representatives of Khandsari and Gur manufacturers were present in that meeting of the Board. It was in pursuance of this decision of the Board that the Cane Commissioner issued Memo. No. 6301-6319/CC, dated 25th November, 1985, addressed to all the Deputy Directors of Agriculture in the State, the project Officers (Sugarcane) and all the Assistant Cane Development Officers in the State requiring them to ensure that no unlicensed power-crushers were allowed to operate in their respective districts for the manufacture of Gur in violation of Clause 3 of the Gur Licensing Order. A partial modification in the contents of this letter was made through Memo No. 6538-57/CC, dated 5th December, 1985, issued by the Cane Commissioner. It is as a result of these communications that the Gur manufacturers were warned against manufacture of Gur by power crushers in violation of Clause 3 of the Gur Licensing Order,—*vide* notice dated 4th November, 1985. Again, it was in pursuance of the aforesaid decision of the Board that the licences of the Khandsari units of the petitioners were not renewed for the crushing season of the year 1985-86, which impelled them to file the present writ petitions. Another meeting of the Board was held on 1st January, 1986. The proceedings of this meeting show that voice was raised by the representative of the Yamunanagar Sugar Mills that the mills should not be allowed to starve of cane by allowing unrestricted lifting of cane by Khandsari and Gur units. He assured that his mill will lift the entire cane in the assigned area by 15th April, 1986. The proceedings further record as under:—

"With one voice, the representatives of the various sugar mills expressed their opinion that if at this stage the restrictions imposed on Khandsari units and implementation of the Haryana Gur Manufacturers Licensing Order, 1972, was

Ganesh Sugar Works and others v. State of Haryana and others  
(D. V. Sehgal, J.)

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withdrawn, the availability of cane to these mills would ultimately fall short of even last year's achievements. This would result in steep fall in the production of white sugar in the State. They suggested that in public interest, and with a view to ensuring adequate availability of sugarcane to the vacuum pan sugar industry, the restrictions imposed should not be relaxed. The view point of Khandsari and Gur units was also considered at length. After detailed discussions on various pros and cons, it was decided that for the time being the restrictions imposed would continue and the position regarding availability of sugarcane to the vacuum pan sugar industry would be reviewed again in the last week of January, 1986. At that time, it would also be decided whether the restrictions imposed should be withdrawn or not."

(30) A statement showing the mill-wise information regarding cane allotted, cane bonded, cane crushed and approximate availability of sugarcane for the year 1985-86 in case the ban on Khandsari and Gur manufacturers is continued or is withdrawn is appended to these proceedings of the Board as Annexure 'A'. This is how the matter stands at this stage.

(31) As noted above, according to the instructions issued by the Government of India,—*vide* letter dated 14th September, 1984 a reasonable balance between various sweetening agents, i.e., sugar, Khandsari, Gur, etc., was required to be maintained as far as sugarcane supply was concerned. It was also suggested that the existing Khandsari units in the reserved areas should be encouraged to shift to unreserved areas. But no restriction on the operation of Khandsari and Gur manufacturers was imposed in the year 1984-85, nor any perceptible step was taken to persuade the Khandsari units to shift out of the assigned/reserved areas for the sugar mills. It is only this year when the Government of India reiterated the resolve to raise sugar production as it had continued to be low for the second season in succession and the measures already suggested were required to be taken by the State through letter dated 4th September, 1985, that the authorities moved into action with a sledged hammer so as to totally ban the manufacture of Khandsari and Gur within the reserved/assigned areas for the sugar mills by not renewing the licences of the Khandsari units in these areas for the crushing season 1985-86 and to restrain production of Gur by the power

crushers. The suggestion made in the letter dated 4th September, 1985, that keeping in view the local conditions measures such as late starting of crushing operations of Khandsari/power crushers should be considered was obviously considered as an inadequate measure. However, in spite of the ban so imposed on the Khandsari units and power crushers, the progress shown by the sugar mills in procurement and crushing of sugarcane during the current season upto 1st January, 1986 does not appear to be very remarkable. A period of two months since the start of the current, crushing season is already over. It cannot be gainsaid that Khandsari and Gur are the sweetening agents consumed by a majority of rural and poor populace of consumers in the State of Haryana, may be because of habit or because of the reason that they cannot afford the cost of sugar for their consumption. If Khandsari and Gur are not at all produced during the current season, there would certainly be a famine of sweetening agent for the poor populace. It may be highlighted here that Khandsari and Gur are as essential commodities for the poor consumers as sugar for others. In fact, as already noticed the definition of 'sugar' in the Act includes Khandsari sugar. It has been underlined by the Supreme Court that one of the important considerations to hold a restriction to be reasonable within the meaning of Article 19 of the Constitution is that it should be in public interest and should be imposed by striking a just balance between deprivation of right and danger or evil sought to be avoided. No doubt, the Supreme Court upheld the ban on Khandsari units for a period of 1½ months but in my view it is difficult to justify refusal of renewal of licences of the Khandsari units by the respondents for the entire crushing season of the year 1985-86. Even the Government of India required the States to maintain a reasonable balance between various sweetening agents as far as sugarcane supply is concerned. One of the suggestions made was the taking of the measure of late starting of crushing operations of Khandsari/power crushers. These instructions no doubt ought to have been followed from the year 1984-85. Simply because no measure according to these instructions was taken in the previous year, total ban on the operation of Khandsari units/power crushers during the current crushing season cannot be said to be reasonable. When admittedly 5 to 10 per cent of the sugarcane is consumed by the Khandsari units, I find that the ban on the operation of these units from the start of the current crushing season uptil now is sufficient to ensure adequate supply of sugarcane to the sugar mills.

(32) I, therefore, partly allow these writ petitions by issuing a writ of *mandamus* to the respondents with a direction that the licences

Pant Raj Sachdev v. The Indian Red Cross Society and others  
(D. V. Sehgal, J.)

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of the petitioners, who are Khandsari manufacturers should be renewed within 15 days from today on submission of applications by them with requisite fee in conformity with the Khandsari Licensing Order. I issue similar direction with regard to the issuance of licences to the petitioners who are Gur manufacturers under Clause 3 of the Gur Licensing Order within 15 days from today on due submission of applications by them with requisite fee in conformity with the said Licensing Order. It has to be noted that by the time these directions are implemented nearly 2½ months' period of the total crushing season would have expired.

(33) In view of the partial success of the petitions, Civil Misc. applications are dismissed as having become infructuous. There shall be no order as to costs.

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H.S.B.

(D. V. Sehgal, J.)

PANT RAJ SACHDEV,—*Petitioner.*

*versus*

THE INDIAN RED CROSS SOCIETY and others,—*Respondents.*

*Civil Writ Petition No. 965 of 1979*

January 30, 1986

*Constitution of India, 1950—Articles 12 and 226—Red Cross Society Act (XV of 1920)—Sections 4, 5, 7 and 10—Punjab Civil Service (Punishment and Appeal) Rules, 1970—Rule 8—Red Cross Society—Whether a 'State' within the meaning of the expression in Article 12—Society terminating the services of its executive secretary—Order of termination impugned on the ground of violation of service rules and principles of natural justice—Writ petition—Whether maintainable.*

*Held*, that from a reading of the various provisions of the Red Cross Society Act, 1920, it is quite evident that the funds of the Society are mainly constituted by gifts and donations. It does not have any share capital which might be said to be held by the Government nor the financial assistance to it by the State in so much as to meet almost its entire expenditure. No doubt, the President