

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6901 of 2020

Mahendra Yadav, Son of Chandi Yadav, Resident of Lohia Path, Garbhuchak,
B.V. College, P.S.- Mithapur, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Food and Civil Supply, Patna.
3. The Principal Secretary, Department of Agriculture, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Vikash Kumar Pankaj, Advocate
Mr. Navin Kumar, Advocate
For the Respondent/s : Mr. Sarvesh Kumar Singh, AAG-13

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

C.A.V JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 19-10-2020

Petitioner prayed for the following reliefs:-

“To issue writ in the nature of writ of mandamus or any writ/ order/ direction directing the Respondents to henceforth immediately & expeditiously procure the ready & harvested crop of maize grains from the farmers of State and accordingly, pay such beneficiaries at the Minimum Support Prices (MSP) fixed by the Government of India.”

2. Can the Court issue a mandamus directing the State to pay a Minimum Support Price (MSP) for an agricultural crop is the issue which arises for consideration before this Court.



3. Petitioner, who has filed the instant petition in public interest, desires that the State fixes a Minimum Support Price for procuring the agricultural crop, i.e. maize, which is lying in abundance in the State of Bihar.

4. The Respondent No.2 has opposed the petition, *inter alia*, on the ground that procurement of particular crop is a policy matter and since the Godowns of the Food Corporation of India are likely to be filled up with other category of food-grains to be procured, any decision for fixing the Minimum Support Price would be contrary to the public interest and against the policy.

5. No other submission is made on behalf of the parties.

6. Pricing and procurement of food-grains for public distribution system, as also fixing Minimum Support Price is a policy decision which cannot be interfered with by the Court, unless of course, such policy is arbitrary, capricious, whimsical or violative of Article 14/21 of the Constitution of India.

7. The principles governing scope of judicial review in the matter of price fixation are now well settled.

1. It is open to the Government to fix such price as it thinks appropriate having regard to public interest.
2. Judicial Scrutiny is far less in cases where price fixation has its origins in non-statutory materials.



3. Principles of natural justice would not be applicable and judicial review would be limited to plea of violation of Article 14.

8. In the Seventh Schedule, List II and List III of the Constitution of India, we find the following entries relevant:-

“List-II

14. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.

26. Trade and commerce within the State subject to the provisions of entry 33 of List III.

Under List III:

33. Trade and commerce in, and the production, supply and distribution of,—

(a) the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products;

(b) foodstuffs, including edible oilseeds and oils;

(c) cattle fodder, including oilcakes and other concentrates;

(d) raw cotton, whether ginned or unginned, and cotton seed; and

(e) raw jute.

34. Price control”

9. Article 162 of the Constitution of India reads as under:

“Extent of executive power of State Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the



executive power of the State shall be subject to, and limited by, the executive power expressly conferred by the Constitution or by any law made by Parliament upon the Union or authorities thereof Council of Ministers.”

10. The power of judicial review of an act of any authority under legislative, administrative, quasi judicial power is also well settled.

11. The Hon’ble Apex Court in **Shri Sitaram Sugar Co. Ltd. v. Union of India, (1990) 3 SCC 223** held as under:-

“52. The true position, therefore, is that any act of the repository of power, whether legislative or administrative or quasi-judicial, is open to challenge if it is in conflict with the Constitution or the governing Act or the general principles of the law of the land or it is so arbitrary or unreasonable that no fair minded authority could ever have made it.”

12. Also, the Hon’ble Apex Court in **AH.S.S.K. Niyami v. Union of India, (1990) 4 SCC 516** held as under:-

“12....It is true as contended by Shri Aggarwal that in paragraphs 52 and 53 in Shri Sitaram Sugar Company case [(1990) 3 SCC 223], this Court held that any act of the repository of power, whether legislative or administrative or quasi-judicial, is open to challenge if it is in conflict with the Constitution or the governing Act or the general principles of law of the land or it is arbitrary or unreasonable that no fair minded authority could ever have made it. Even then this Court has pointed out that the



impugned orders are undoubtedly based on an exhaustive study by experts and that the impugned orders though open to criticism would not be subject of judicial review....”

Price Fixation where Statutory provision is present

13. Hon’ble the Apex Court in **Union of India v. Cynamide India Ltd., (1987) 2 SCC 720** held as under:-

“4. We start with the observation, “Price fixation is neither the function nor the forte of the court”. We concern ourselves neither with the policy nor with the rates. But we do not totally deny ourselves the jurisdiction to enquire into the question, in appropriate proceedings, whether relevant considerations have gone in and irrelevant considerations kept out of the determination of the price....”

“7. The third observation we wish to make is, price fixation is more in the nature of a legislative activity than any other. It is true that, with the proliferation of delegated legislation, there is a tendency for the line between legislation and administration to vanish into an illusion. Administrative, quasi-judicial decisions tend to merge in legislative activity and, conversely, legislative activity tends to fade into and present an appearance of an administrative or quasi-judicial activity. Any attempt to draw a distinct line between legislative and administrative functions, it has been said, is “difficult in theory and impossible in practice”... “A legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases; an administrative act is the making and issue of a specific



direction or the application of a general rule to a particular case in accordance with the requirements of policy....”

Price Fixation in the absence of Statutory provision

14. The Hon’ble Apex Court in **Royalaseema Paper Mills Ltd. v. Govt. of A.P., (2003) 1 SCC 341** held as under:-

“15.This Court [In the case of Union of India v. Cyanamide India Ltd.] was examining the scope of judicial scrutiny in the matters of price fixation where it was governed by statutory provisions. The scope of judicial scrutiny would be far less where the price fixation is not governed by the statute or a statutory order. Where the legislature has prescribed the factors which should be taken into consideration and which should guide the determination of price, the courts would examine whether the considerations for fixing the price mentioned in the statute or the statutory order have been kept in mind while fixing the price and whether these factors have guided the determination. The courts would not go beyond that point. In the present appeals, there is no law, or any statutory provision laying down the criteria or the principles which must be followed, or which must guide the determination of rates of royalty... It is open to the Government to fix such price as it thinks appropriate having regard to public interest, which inter alia, may include interest of revenue, environmental, ecology, the need of mills and the requirements of other consumers.”



15. Also, the Hon'ble Apex Court in **Union of India v. Cipla Ltd., (2017) 5 SCC 262** held as under:-

“91. In that context and in response to the submission made, this Court drew a distinction between price fixation governed by statutory considerations and price fixation governed by non-statutory considerations. It was held that on this basis *Union of India v. Cyanamide India Ltd.*, was distinguishable since it dealt with price fixation based on statutory considerations. In a case of price fixation having its origin in non-statutory materials the scope of judicial scrutiny would be far less...”

“92. In these appeals, we too are presently concerned with a stage anterior to actual price fixation, namely, recommending and prescribing the norms that would eventually form the basis for fixing the retail price and ceiling price of formulations. The view expressed in *Royalaseema Paper Mills [Royalaseema Paper Mills Ltd. v. State of A.P., (2003) 1 SCC 341]* would, in our opinion, apply to the Reports of the Masood Committee and the Jharwal Committee set up by the Central Government for recommending the norms for the purposes of Para 7 of the DPCO 1995. The Reports were antecedent materials, non-statutory and recommendatory and could have been rejected by the Central Government...”

16. The Hon'ble Apex Court in **Bihar SEB v. Pulak Enterprises, (2009) 5 SCC 641** held as under:-



“29. The significance of the question as to whether fixing the rate of fuel surcharge is a legislative function or a non-legislative function is that if the function is held to be legislative, in the absence of any provision in that regard the principles of natural justice would not be applicable and the scope of judicial review would also be limited to plea of discrimination i.e. violation of Article 14 of the Constitution of India. As a general proposition, the law on the point is settled.”

17. In the instant case, the State has placed on record the revised guidelines for distribution of coarse grains, including the maize amongst the beneficiaries, termed as “Targeted Public Distribution System or MDM/ICDS Scheme”. Whether the decision is in terms of the said policy, statute or not, we need not go into same. The law laid down in **Shri Sitaram Sugar Co. Ltd.** (supra); **Cynamide India** (supra); **Rayalaseema Paper Mills Ltd.** (supra); and **Cipla Ltd.**(supra) is very clear.

Nothing is brought to our notice indicating the policy or the action of the respondents to be violative of Article 14/21 of the Constitution of India. Only for the reason that this year in the State of Bihar, the crop of maize is in excess than the previous year, cannot be a reason for this Court to issue a mandamus directing the State to procure the food-grains i.e. maize under the Minimum Support Price, so fixed with respect to other items of food-grains.



18. For all the aforesaid reasons, writ petition stands disposed of.

19. Interlocutory Application, if any, shall stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

K.C.Jha/-

AFR/NAFR	AFR
CAV DATE	13.07.2020
Uploading Date	19.10.2020
Transmission Date	

