GANGA SUGAR CO. LTD., ETC. A

v.

STATE OF U.P. & OTHERS ETC.

September 20, 1979

[Y. V. CHANDRACHUD, C.J., V. R. KRISHNA IYER, N. L. UNTWALIA, P. N. SHINGHAL AND A. D. KOSHAL, JJ.] B

U.P. Sugarcane Purchase Tax Act, 1961 *Sections* 3, 3*A*, 3*B*—*Validity of.*

Constitution of India—Sales Tax Entry 54 *List II—Drafting of legislation on "Controlled Industry" by the State—Validity of—*

C

These appeals arise from a common demand for tax by the State from a number of Sugar Mills on the purchase of Sugarcane at a rate regulated by weight and not on value. The Cess under the U.P. Sugarcane Cess Act, 1956 was declared *ultra-vires* which resulted in the enactment of Sugarcane Purchase Tax Act, 1961. In a fiscal sense, the Purchase Tax Act, is a reincarnation of the Cess Act, but in a legislative sense, it is an independent statute with a different source of power, impact and structure. The tax in question is a successor to the Cess which was struck down but jurisprudentially, the levies are different in character and attributes and constitutionally the imposts derive from different legislative entries and have to be tested by different standards. The Act by Section 3 imposes a rate of tax at the rate of Rs. 1.25 paise per quintal of sugarcane purchased by a factory owner, the corresponding rate for a "unit" being paise 50. Under Section 3(2) of the Act, the charge is on the purchase transaction payable by the owner of the factory or unit "on such date" at such place and in such instalment as may be prescribed. D E

The appellant had challenged the charge of tax. The High Court dismissed the Writ Petition on the ground that the petitioners have not supplied for any period figures of actual prices paid by them, actual quantity of cane crushed, actual quantity of juice derived, actual quantity of sugar produced and their earnings and, therefore, it was not possible to take the view that tax by weight was unfair and inequitable. The High Court further held that tax by weight had fairer relation to the production of sugar by earnings of a factory than tax by price and consequently no one could complain that the impugned provisions treated unequals as equals. Equal crushing attracts equal tax. F

On appeal to this Court, it was argued on behalf of the appellants that (i) the scheme and sections of the Act are *ultra-vires* (ii) the charge of tax is bad because in its true character it is a legislation in respect of "Controlled Industry" and this power belongs exclusively to Parliament under Entry 52 of List I (Seventh Schedule) of the Constitution, (iii) there is discrimination between sugar factories and khandsari units by the impost of differential rates of tax and liability is computed by the weight of the cane as distinguished from its monetary value, there is an inevitable arbitrariness built into the texture of the scheme and (iv) the Act, masked as Purchase Tax, in essence asks for an Excise Duty on sugar-manufacture and is, therefore, invalid as colourable legislation. G H

A HELD: (i) This Court cannot lose sight of the all-India impact when the law is laid down under Article 141 of the Constitution and judgments of this Court are decisional between litigants but declaratory for the nation. The scheme of the Act is simple and workable. It is undisputed that sugar industry is a controlled industry within the meaning of Entry 52, List I of Schedule and therefore, the legislative power of Parliament covers enactments with regard to industries having regard to Article 246(1) of the Constitution. Entry 54 in B List II of the Seventh Schedule, empowers the State legislature to legislate for taxes on purchase of goods and so if the Act under consideration is attracted, in pith and substance by this entry, legislative incompetence cannot void the Act. [774 E-F, 781 G-H, 782 A]

(ii) The contention that the charge of tax is bad because in its true character it is a legislation in respect of controlled industry and which power belongs C exclusively to Parliament under Entry 52 of List I has no force. *Tika Ram's case* deals with the identical question of "controlled industry" vis-a-vis U.P. Legislation regulating Sugarcane supply and purchase under the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953. That statute reserved or assigned to sugar factories specified cane purchasing centres for the purpose. This regimentation of sugarcane growers and regulation of cane supplies to specified millers by a State enactment was attacked on the precise ground that D sugar being a "controlled industry" any enactment affecting such industry including the regulation of supplies of raw materials thereto was taboo. The plea was dismissed as specious, and the appeals under this Court's consideration are *a fortiori* cases where the rejection of the contention can be more confidently made. [782 C, F-H, 783 A]

"Industry" as a legislative topic has a large and liberal import, true. But F what peripherally affects cannot be confused with what goes to the heart. An acquisition of land *for* sugar mills or *of* sugar mills may affect the indsutry but is not an action in the legislative field forbidden for the States. Sales tax on raw materials going to a factory may affect the costing process of the manufacture but is not legislation on industrial process or allied matters. Indeed, if the State Legislature cannot go anywhere near measures which may affect topics reserved for Parliament a situation of *reductio ad absurdum* may be F reached. [780 B-C]

Ch. Tikka Ram's case [1956] SCR 393, *Shyamkant Lal* [1956] SCR 427, *Kanan Devan Hills Produce Company Ltd.* [1973] 1 S.C.R. 357 followed.

(iii) The contention that there is discrimination between sugar factories and khandsari units by the impost of differential rates of tax and that when a G purchase tax liability is computed by the weight of the cane as distinguished from its monetary value, there is an inevitable arbitrariness built into the texture of the scheme, has no force. Neither in intent nor in effect is there any discriminatory treatment discernible to the constitutional eye. Price is surely a safe guide but other methods are not necessarily vocational. It depends Practical considerations of the Administration, traditional practices in the Trade, other economic pros and cons enter the verdict but, after a judicial generosity H is extended to the legislative wisdom, if there is writ on the statute perversity, 'madness' in the method or gross disparity, judicial credulity may snap and the measure may meet with its funeral. This Court has uniformly held that classi-

fication for taxation and the application of Article 14, in that context, must be viewed liberally, not meticulously. [786 F-H, 787 B-D] A

Murthy Match Works case, [1974] 3 S.C.R. 121, applied.

It is well established that classification is primarily for the legislature and becomes a judicial issue only when the legislation bears on its bosom obvious condemnation by way of caprice or irrationality. [789 A] B

(iv) The contention that the Act masked as Purchase Tax, in essence asks for an Excise Duty on sugar manufacture and is therefore invalid as colourable legislation has no force. Tax on sale of purchase must be on the occurrence of a taxing event of sale transaction. Beyond that is left to the free play of the legislature, subject, of course, to the contra-indication about capricious, arbitrary or irrational features. It is a superstition, cultivated by familiarity, to consider that all sales-tax must necessarily have nexus with the price of the commodity. Price as basis is not only usual but also safe to avoid uneven, unequal burdens, although it is conceivable that a legislature can regard prices which fluctuate frequently, as too impractical to tailor the purchase tax. It may even be, in rare cases, iniquitous to link purchase tax with price, if more sensible bases can be found. Supposing a legislature classifies sales tax on the basis of human categories and reduces the rate or exempts the tax in respect of abject destitutes, or starving flood victims or notoriously hazardous habitations, with respect to necessity of life. Such differentiation cannot be castigated as discrimination out of hand. It is common and commonsense that reliable standard is the price, although in regard to customs duties there are still items levied on the nature of the goods rather than its value in money. For the present, it is sufficient to state that the practice has been to impose purchase tax by weight of cane. Also, in weight of cane, its sucrose content and its price have a close nexus, although, theoretically, they may appear unconnected. Unequals cannot be treated equally since mechanical uniformity may become unmitigated injustice. Khandsari units are cottage industries unlike sugar factories and need legislative succour for survival. Their economy justifies State action, classifying them as apart from factories and we fail to appreciate the flaw in the scheme on this score. [789 F-H, 790 A-B, F-G] C D E F

Nothing more than prevention of escapement of purchase tax on cane is done and what is done is legitimately incidental to the taxing power. Peripheral similarity between purchase tax and excise levy does not spell essential sameness. Sugarcane tax operates in the neighbourhood of sugar excise but proximity is not identity. The tax is only on purchase of cane, not its conversion into sugar. If the miller has his own cane farm and crushes it, he has no purchase tax to pay but cannot escape excise duty if any. Again if cane is purchased by a miller and it is later robbed or destroyed before sugar is manufactured, the State tax is exigible although excise on production is not. A perspicacious appreciation of the implications of purchase and production dispels confusion on this issue. To buy new produce is a step preliminary to manufacture but is not part of manufacture. [791 D-F] G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 712 of 1972. H

From the Judgment and Order dated 21-2-1972 of the Allahabad High Court in Civil Misc. Writ No. 5271/71.

A Civil Appeal Nos. 962-964 of 1972

From the Judgments and Orders dated 14-2-1972/21-2-1972 of the Allahabad High Court in Civil Writ No. 335/71, 4778/71, and 3334/71.

Civil Appeal No. 1013 of 1972.

B From the Judgment and Order dated 14-2-1972 of the Allahabad High Court in Civil Misc. Writ No. 2791/71.

Civil Appeal Nos. 1063-1065 of 1972.

From the Judgment and Order dated 21/22-2-1972 of the Allaha-
C bad High Court in Civil Writ Nos. 572, 843 and 1169/72.

Civil Appeal Nos. 1066 & 1067 of 1972.

From the Judgment and Order dated 21/22nd Feb. 1972 of the Allahabad High Court in C.W. Nos. 5273/71 and 1170/72.

Civil Appeal Nos. 1140-1142 of 1972.

D From the Judgment and Order dated 29-3-1972/14-2-1972 and 21-2-1972 of the Allahabad High Court in Civil Misc. Writ Nos. 5064/71, 1801/71 and 5018/71.

Civil Appeal No. 1160 of 1972.

E From the Judgment and Order dated 18-4-1972 of the Allahabad High Court in Civil Misc. Writ No. 4223/71.

Civil Appeal Nos. 1329-1330 of 1972.

From the Judgment and Order dated 18-4-1972 of the Allahabad High Court in Civil Misc. Writ Nos. 4587/71 and 4605/71.

F Civil Appeal No. 1367 of 1972.

From the Judgment and Order dated 5-4-1972 of the Allahabad High Court in C.M.W. No. 2278/70.

Civil Appeal No. 1409 of 1972.

G From the Judgment and Order dated 14-2-1972 of the Allahabad High Court in Civil Misc. Writ No. 1803/71.

Civil Appeal Nos. 1415 & 1598 of 1972.

From the Judgment and Order dated 14-2-1972 of the Allahabad
H High Court in Civil Misc. Writ No. 1802/71 & 3668/70.

Shanti Bhushan (in C.A. 712) *P. R. Mridul* (in C.A. 962) *P. N. Tiwari, K. J. John* and *J. S. Sinha* for the Appellants in CA

712, 962-963, 1063-1069, 1140-1142, 1160, 1329, 1330 and 1598/72. A

Shanti Bhushan (in C.A. 409), *O. P. Malhotra* (in C.A. 1415) *R. K. P. Shankar Das* (1013 and 1409) *H. K. Puri* and *V. K. Bahl* for the Appellants in CA 1013 and 1409 and 1415/72.

Yogeshwar Prasad, Mrs. Rani Chhabra and *Mrs. S. Bagga* for the Appellants in CA 1367/72. B

O. P. Rana and *R. Ramachandran* for the Respondents.

The Judgment of the Court was delivered by

KRISHNA IYER, J.—This phalanx of appeals, over 200 strong, has stagnated for eight years and slowed down other disposals, which is unfortunate. C

We believe that the price of healthy justice from the highest Bench is eschewal of all but those cases which possess the twin attributes of (i) substantial question of law of general importance (ii) which needs to be decided by the Supreme Court itself, whether the jurisdiction be under Article 133, 134 or 136. Such being the jurisdictional dynamics of the Supreme Court, save in exceptional cases of appalling injustice, we hope the Bar will share this concern and avoid a breakdown for, truly, the question today is : To be or not to be. D

All these appeals spring from a common demand for tax by the State of Uttar Pradesh from a number of sugar mills on the purchase of sugarcane at a rate regulated by weight, not value, a pragmatic novelty in the sales tax pattern which has provoked an argument about its validity. Legal ingenuity, which rich mills, making common cause, could summon, spun out several constitutional and other challenges to the levy in the High Court, all of which became casualty when the Division Bench delivered judgment. Even so, the memoranda of appeals have set forth an imposing array of grounds of varying merit, all save three of which, by the wise husbandry of counsel, have been mercifully abandoned. The three survivors deserve no better fate but it behoves the court to state the triple challenges presented from various angles and ratiocinate at some length to reach the litigative terminus. One or two more minor matters, which figure in the debate at the bar, may, however, be noticed in the course of the stride. E F G

Far more facts and a fuller projection of the law may be in place here. We are concerned with a levy under the U.P. Sugarcane (Purchase Tax) Act, 1961, (for short, the Act), Sales tax, item 54 in the State List, was once described in the thirties by a far-sighted Chief H

A Minister and nation-builder, Sri C. Rajagopalachariar, as a *Kamadhenu*. True to his prescience, every State, today, relies heavily on this levy for which the common man eventually pays heavily. Uttar Pradesh, which grows sugarcane and runs sugar mills in the private sector, hit upon a tax on the purchase of cane by millers who manufactured sugar and *khandasari*, at differential rates, but it is a heritage from the thir-
B ties. A little legislative history, mixed with tentative inferences, illuminates the legal controversy since appellants' counsel set much store by this as an auxilliary circumstance.

A broad brush projection of the fiscal story and background economy may now be attempted, although we regret that no authoritative
C material, beyond what can be culled from the High Court judgment, is forthcoming. We will make-do with it although litigants, especially in the battle-field of unconstitutionality, must produce the socio-economic bio-data of challenged legislation, explaining the 'how', the 'why' and 'why not' of each clause lest lay minds, lost in legal tuning, should miss meaningful sound and social sense which experts may explain.
D Law cannot go it alone—nor lawyers.

Many States in India grow sugarcane, all of which, save negligible quantities, suffer crushing and its sucrose content is recovered as sugar, *khandasari* and, on a cottage industry basis, as gur. Andhra Pradesh, Bihar, Gujarat, Haryana, Kerala, Karnataka, Maharashtra, Madhya
E Pradesh, Punjab, Pondicherry, Tamil Nadu and Uttar Pradesh not only grow sugarcane but enjoy purchase tax, a majority of which levy *by weight* rather than *on price*. And we cannot lose sight of the All-India impact when the law is laid down under Article 141. Judgments of this Court are decisional between litigants but declaratory for the nation.

F

Sugar is an export item and, of course, is a daily necessary at home. Uttar Pradesh, according to the Report of the Tariff Commission on the cost Structure of the Sugar Industry and the Fair Price for Sugar (1969) has the heaviest concentration of sugar mills in the country but several of them are uneconomic and some sick. Modernisation is
G a message lost on U.P. sugar manufacture and the cane cultivator's fortune hangs on the fluctuating prosperity of the marginal millers. The sugar and sugarcane economy is the victim of a variety of forces which add to the precariousness and poor efficiency of factories. The area under cultivation recedes or expands with the decrease or increase of crushing by the factories and the misery of losses and instability of
H acreage under cane cultivation have played havoc with agriculturists. Dithering prices of sugar, export promotion as a policy, 'levy' of sugar to feed the poor and a number of other intricate economic facts

have made the fiscal manoeuvring a matter of expertise and social justice. A

While, on a pan-Indian survey, wide variations in quality of cane and efficiency of mills may be found, within Uttar Pradesh, broadly speaking, the sucrose content differs but little and the percentage of recovery also is more or less the same for factories in the State save where the machinery effects efficiency. So much so, the price of sugarcane, usually decided by the Central Government's notification of minimum price, depends on its weight and sucrose recovery and, in practice, within a region both gravitate towards a common point. Moreover, the Uttar Pradesh sugar map reveals, as pointed out by the High Court, that 'the more you crush, the more you produce; the more you produce, the more you earn. So the quantity of sugarcane crushed by a factory is an index of its earnings'. The relevance of this relationship between consumption of *quantity* by the mills, their sugar production and quantum of profits, to the question of tax incidence, its equity and equality will be taken up by us later on. Prima facie, there is a cane-sucrose correlation for the State. Apart from it, the more the cane purchased, the more the profits spun; and the justice of fixing the tax tag on the weight of cane purchased argues itself. And what makes for just impost of the tax burden is the antithesis of arbitrariness. When the majority of the sugarcane States have imposed purchase tax by weight, net value, a reinforcement of sorts is added to this inference. The High Court observes, based on these data : B C D E

> "Prime facie, purchase tax by weight would ensure more stable revenue over the years than the purchase tax by the price of sugarcane, which rises and falls in a four years' cycle". F

This statement has not been upset by any facts placed before the court and *ipse dixits* of counsel, *sans* data, are airy economics.

Another market eccentricity must be noticed. Business cycles of boom and slump have been the bane of the sorry sugar and sugarcane story of that State, and fiscal policy to stabilise a wobbling market economy has been presumably evolved thoughtfully. The Report we have referred to bears testimony to this cyclical factor and the High Court has drawn inferences therefrom. Let us view the inequity of the impost had it been related to the price of cane. The High Court gives some facts : G H

> "The price of sugarcane is, according to the Report of the Tariff Commission, determined by the law of supply and

A demand in a particular year. Accordingly it may vary disproportionately in various regions of the State. One factory may pay more for the same quantity of sugarcane than the other. Indeed, the Basti Sugar Mills Company Limited has made that allegation. The Basti Sugar Mills Company Limited paid Rs. 7,00,000/- less than the Seksaria Sugar B Mills Private Limited for the same quantity of sugarcane. If the quantity of sugar manufactured by them in that year is more or less the same, their earnings will be the same. So tax by price would be more oppressive on the Seksaria Sugar Mills Private Limited. On the other hand, as tax is by weight, both of them would have paid the same amount of C tax in that year. Neither of them could complain of unfair or inequitable incidence of taxation."

Of course, stabilisation or uniform fixation of cane prices is the annual endeavour of Central and State Governments and this reduces D disparity among millers, except the factor of efficiency. Variations in cane transport costs are minimized and taken care of by zoning purchases statutorily, and then weight-price correlation becomes more stable and sober in practice than abstract arguments based on printed paper and flight of fancy may luridly suggest. The life of the law is real life, not little-logic and the High Court's deductions, though a E lay exercise, cannot be faulted as fallacious by lay advocacy.

Regretably, we have no contrary statistics and the learned judges have stressed this weakness. We agree with those observations and accept them since nothing urged before us has furnished factual contradiction of these premises :

F "The petitioners have not supplied for any period figures of actual prices paid by them, actual quantity of cane crushed by them, actual quantity of juice derived, actual quantity of sugar produced and their earnings. They have not tried to prove that the standard of price would be more G just and equitable than the standard of weight for levy of purchase tax. From the meagre data gleaned from the Tariff Commission's Report, it is not possible to take the view that tax by weight is unfair and inequitable. And Article 14 ensures to the citizen the basic principle on which rests justice under the law. It assures to the citizen H the ideal of fairness (Corpus Juris Secundum Vol. XVI-A p. 296). The petitioners have failed to discharge the heavy burden of proof".

Abstract submissions flung from imagination do not reach the point of forensic take-off, if we may add. Tentatively, subject to further examination, the conclusion of the High Court commends itself to us : A

> "The incidence of purchase tax by weight appears to be more related to the earning capacity of the assessee than the incidence of tax by price of sugarcane". B

To clinch the issue, as it were, the High Court winds up :

> "The petitioners have not argued that the impugned provision is confiscatory in nature. I have already shown that tax by weight has got fairer relation to the production of sugar by an earning of a factory than tax by price. Consequently, no one can fairly complain that the impugned provision treats unequals as equals. Equal crushing attracts equal tax." C

We may comment by way of supplement that equal crushing means equal weight of cane. So cane quantity and tax liability roughly match and remove the fear of uneven imposts. D

Let us go back to pick up the threads, leaving this pertinent detour for a while. Sugarcane agriculture and sugar industry have been the cynosure of legislative attention at Central and State levels for long. We may start a rapid survey from 1932 when the Sugar Industry Protection Act, 1932 was put on the statute book. E

Its object was to foster and develop the sugar industry by protective tariffs. Then came the Sugarcane Act 1934 which empowered the Provincial Government to fix a floor price for sugarcane sold to sugar factories. This was followed by the U.P. Sugar Factories Control Act 1938, which replaced the earlier 1934 Act. Thus came into existence a statutory Sugarcane Control Board and a Cane Commissioner. Section 29(1) of this Act imposed a.....sales tax on the sale of sugarcane. Sub-section (3) provides for a cess on the entry of sugarcane into a local area. The necessity for the fostering legislative care of sugarcane cultivation and the imposition of a tax in this behalf is explained in the Statement of Objects and Reasons to the Bill of 1938 : F G

> "The future of the sugar industry depends to a very large extent on a big drive for the improvement of cane cultivation and its planned production on a rational basis. To enable Government to carry out the necessary measures in this connection, which will involve considerable expenditure, and to take other steps conducive to the welfare of H

A the industry, cane growers and agriculturists generally, it is proposed to impose a *tax* upto a maximum limit of *six pies a maund of the sale of sugarcane to a factory or a cess at the same rate on the entry of cane* into a local area notified in this behalf for consumption, use or sale therein."

B It is significant that 40 years ago the tax for the benefit of cane growers was linked up with weight. It is not as if a freak flash flit past the legislative mind of linking up purchase tax with weight of cane in 1961 only. Apparently, measure of tax by weight of stuff in the peculiar circumstances of sugarcane economy has been tested by time and metabolised into the consciousness of the affected Trade and C the Administration.

Be that as it may, the development of sugarcane cultivation was taken up on a systematic basis as per the statutory mandate. Both the tax and the cess contemplated by the 1938 Act went by the maund and although the cess was to be levied from the seller he was allowed D to recover it from the purchaser. The 1938 Act gave place to the U.P. Sugarcane (Regulations of Supply and Purchase) Act, 1953, which created a scientific scheme, created a Fund, injected the concept of cane growers' cooperatives and provided for levy of cess. The cess part of the Act was replaced by the U.P. Sugarcane Cess Act 1956. We must remember that by now the Government of India Act 1935 E had ceased to exist and the Constitution of India had come vibrantly into being with the fundamental rights of Part III. The cess under the 1956 Act was attacked and fell victim to a constitutional challenge and this Court in *Diamond Sugar Mills' Case*(1) declared the Cess Act *ultra vires*. The consequence of this mortality was the incarnation of the U.P. Sugarcane Purchase Tax Act 1961 which is being F impeached as *ultra vires* in these appeals. When cess failed, the State would have been constrained to refund nearly half a hundred crores of rupees. Validation by parliamentary legislation in conformity with the Constitution was, therefore, done. Eventually, the levy of a purchase tax was enacted into law by the U.P. Sugarcane G (Purchase Tax) Act 1961 (referred to as the Act). In a fiscal sense, the Purchase Tax Act is a reincarnation of the Cess Act but, in a legislative sense, it is an independent statute with a different source of power, impact and structure. While the appellants have a case that this fiscal history substantiates their thesis that the present purchase tax is a disingenuous disguise, the State contends that its power to H impose a purchase tax is well within List II, Entry 54. An appeal to history cannot impeach power. Plainly read, the Act, architectures

(1) [1961] 3 S. C. R. 242.

a typical tax scheme, leviable at the purchase point with one difference, but we have been invited by Shri Shanti Bhushan, counsel for some of the appellants, to lift the veil, look at the true anatomy of the Act and discover the unseemly unconstitutionality in its bosom. A

Before we adventure into an assessment of the vulnerability of the provisions to the appellants' artillery, we must project a picture of the impugned Act in its essentials, sufficient to appreciate the grievances and their constitutional merit, remembering the judicial limitation that where economic diagnostics and administrative pragmatics blend to produce a legislative outfit, restraint is prudence save where caprice compels. The saga of the Act having been chronicled, we may proceed to a dissection of the Act from the Constitutional angle. B C

It is worth mentioning that Central and State Governments have been deeply concerned with the economic pros and cons of sugarcane and sugar. The Tariff Commission in its report gives much of the material relied on by the High Court. Indeed, when any legislation is assailed as arbitrary, unreasonable or otherwise unconstitutional one expects both sides not to assume the Court to be omniscient but to furnish the surrounding materials, statistical data and the compulsive factors which operated to provide the prescriptions in the legislation consistently with the imperatives of Part III. This statutory "intelligence" should be a necessary accompaniment to any litigative exercise where constitutionality depends on social facts. Orality unlimited and invitation into abstractions can hardly do duty for a methodical marshalling of meaningful facts. Anyway, we will discuss the merits of the contentions on the available materials supplemented by warrantable guesses, with a presumption in favour of constitutionality strengthened by the High Court's affirmance since the principal attack is based on Article 14. D E F

Historically, the tax in question is a successor to the cess which was struck down, but jurisprudentially, the levies are different in character and attributes and constitutionally, the imposts derive from different legislative entries and have to be tested by different standards. In short, the Purchase Tax Act has to be judged on its own merits in the light of submissions of counsel. The anatomy of the Act, to the extent relevant, may now be envisaged. Section 3 is the charging section and creates a liability on the purchase of sugar cane payable by a factory owner or a unit owner. The rate is one rupee 25 Paise per quintal and 50 Paise per quintal for factories and units respectively. The taxing event is the purchase transaction by the owner of a factory or a unit. An option is provided for in the case of owners G H

A of units to pay tax on an assumed quantity prescribed by Government. This is obviously to simplify and to benefit owners of units who are presumably tiny producers of khandsari sugar. By definition, factories and units fall under different categories, the former being geared to manufacture of sugar by power, the latter being engaged in the production of Gur, Rab or Khandsari sugar in crushers driven by B mechanical power. A classification based on scale of operations, product manufactured and other substantial differences bearing on production capacity, profits of business and ability to pay tax, is constitutionally valid and the feeble contention counsel put forward that there is discrimination between owners of factories and units must C fail without much argument.

Section 3A, intended to guard against escape of tax, ensures that the sugar produced out of the sugarcane transaction exigible to tax shall virtually stand security, if we may crudely express ourselves that way. The sugar produced in the factory shall not be removed until the tax levied under Section 3 is paid. Other detailed provisions D calculated to safeguard the tax are also contained in Section 3A. Provision for revision of assessment is contained in Section 3B.

While fines and punishments for contraventions find a place in Section 8, remission of taxes is also provided for in Section 14 and comprehensive rule-making power is vested in government under Sec- E tion 15. Section 15(2) (F) (G) and (H), in particular, chase the sugar manufactured from the taxable sugarcane and empower government to make rules to secure the sugar bags from leaving the factory premises until the liability of the State is discharged.

To sum up, the scheme is simple and workable. Uttar Pradesh F has a number of factories which manufacture sugar. There are quite a few units which, with less mechanisation, produce, out of raw sugarcane, less refined, perhaps more nutritious, end-products like khandsari sugar, gur or rab. These two classes are well-established, their operations, economics and manufactures are different and the fiscal legislation in question classifies them as factories and units and G imposes differential levies. The Act, by Sec. 3, imposes a rate of tax of 1 rupee 25 Paise per quintal of sugarcane purchased by a factory owner, the corresponding rate for a 'unit' being but 50 Paise. The charge is on the purchase transaction payable by the owner of the factory or unit 'on such date, at such place and in such instalments as may be prescribed' (Sec. 3(2).) Interest and penalty, appeal, H prosecution and other consequential provisions find a place as usual but the basic challenge is to the charge of tax on three grounds. The charge is bad, firstly, because, argues counsel, it is, in its true character,

a legislation in respcet of a 'controlled industry' and this power belongs exclusively to Parliament under Entry 53 of List I (VII Schedule). A

The next submission to shoot down the measure is that the Act, masked as purchase tax, in essence asks for an excise duty on sugar manufacture and is, therefore, invalid as colourable legislation, seeking to achieve, on the sly, what it dare not do straight. Surely, excise duty falls under Entry 84 of List I and the State Legislature cannot usurp that power. Even if the levy be a hybrid one, as Sri Malhotra made it out to be, it falls under Entry 97 of List I, out of bounds for the State Legislature. B

The final shot fired to bring down the fiscal levy on the score of *ultra vires* is from the customary barrel of Article 14. A multi-prolonged attack, based on Article 14, was launched. The levy cast equal burdens on unequals and so was invalid on the ground of discrimination. A tax, by this canon, must be linked to price of canon, not its quantity, lest the millers be made to pay unevenly for two consignments of equal weight but unequal price. A refinement of the same argument was developed on the basis of the sugar output from the cane crushed. The sucrose content of sugarcane varies from cane to cane and, perhaps, from mill to mill and to lump them together quantitatively for a uniform impost is to turn the Nelson's eye on the *inter se* inequality. Procrustean cruelty is anathema for the law where unequals are equalised into arbitrary conformity. Counsel submit that sucrose is the touchstone and where that content varies but the levy is standardised on the weight of cane the exaction must be outlawed under Articles 14 and 13 and even 19 (unreasonable). C D E

We reject all the three contentions and hold that the Act can parachute to safety despite the ineffectual artillery. For, as on Bubaivat, we heard great argument about it and about but evermore came out by the same door as in we 'went'. Let us anyway scan, the 'substantial points' which have sojourned in this Court all these years awaiting a constitutional pronouncement. Incidentally, most of these pleas have been negatived by this Court on earlier occasions but phantom arguments often survive after death. F G

Is the legislation *ultra vires* because the State enters the forbidden ground by enacting on controlled industry ? It is undisputed that sugar industry is a controlled industry, within the meaning of Entry 52, List I of Schedule and, therefore, the legislative power of Parliament covers enactments with respect to industries having regard to Article 246(1) of the Constitution. If the impugned legislation invades Entry 52 it must be repulsed by this Court. But entry 54 in List II H

A of the Seventh Schedule empowers the State to legislate for taxes on purchase of goods and so if the Act under consideration is attracted, in pith and substance, by this Entry legislative incompetence cannot void the Act. The primary question, which we have to pose to ourselves, is as to whether this State Purchase Tax Act is bad because it is a legislation with respect to a controlled industry, to wit, the sugar B industry. What matters is not the name of the Act but its real nature, its pith and substance. The same problem demands our attention at a later stage in considering the contention that the levy under examination is, in a sense, an excise duty and not a purchase tax.

C We are somewhat surprised that the argument about the invalidity of the Act on the score that it is with respect to a 'controlled industry' dies hard, despite the lethal decision of this Court in *Ch. Tika Ramji's case,*(1). Enlightened litigative policy in the country must accept as final the pronouncements of this Court by a Constitution Bench unless the subject be of such fundamental importance to national life D or the reasoning is so plainly erroneous in the light of later thought that it is wiser to be ultimately right rather than to be consistently wrong. *Stare decisis* is not a ritual of convenience but a rule with limited exceptions. Pronouncements by Constitution Benches should not be treated so cavalierly as to be revised frequently. We cannot devalue the decisions of this Court to brief ephemerality which recalls E the opinion expressed by Justice Roberts of the U.S. Supreme Court in *Smith* v. *Allwright*(2) "that adjudications of the Court were rapidly gravitating 'into the same class as a restricted railroad ticket, good for this day and train only' ".

Let us examine the worth of the contention that the impugned legis- F lation is one on a 'controlled industry' and therefore out of bounds for the State Legislature.

Tika Ramji's case (supra) deals with the identical question of 'controlled industry' vis-a-vis a U.P. Legislation regulating sugarcane supply and purchase. Certain sugarcane growers of Uttar Pradesh G assailed the vires of the U.P. Sugarcane (Regulations of Supply and Purchase) Act 1953. That statute reserved or assigned to sugar factories specified cane purchasing centres for the purpose. This regimentation of sugarcane growers and regulation of cane supplies to specified millers by a State enactment was attacked on the precise ground that sugar being a 'controlled industry' any enactment affecting H such industry including the regulation of supplies of raw materials

(1) [1956] S. C. R. 323.
(2) 321 U. S. 649 at 669 (1944).

thereto was taboo. The plea was dismissed as specious, and the appeals under our consideration are *a fortiori* case where the rejection of the contention can be more confidently made.

N. H. Bhagwati, J., speaking for the Court traced the legislative history bearing on sugar and sugarcane. Reference was made to the Industries (Development and Regulation) Act 1951 which brought in as Item 8 of the First Schedule to the Act the industry engaged in the manufacture or production of sugar. The impugned legislative measure was occasioned by the need to streamline the supplies of cane to factories. The law was designed to provide for a rational distribution of sugarcane to factories, for its development on organised scientific lines, to protect the interests of the cane growers and of the industry. The submission made there was that even though the impugned Act purported to legislate in regard to sugarcane required for use in sugar factories, it was, in pith and substance and in its true nature and effect, legislation in regard to sugar industry which had been declared by Act LXV of 1951 to be an industry under Entry 52 of List I. It was urged that the word 'industry' was of wide import and included not merely manufacture but also the raw materials for the industry. The supply and distribution of raw materials for the sugar industry were, therefore, matters having a clear impact on the production of sugar. In this view, it was pleaded that sugarcane control vis-a-vis sugar factories was a colourable exercise of legislative power by the State trespassing upon the field of Entry 52 in List I.

Tikka Ramji's case (supra) gave short shrift to the submission that all *sugarcane* legislation linked to sugar factories was *sugar legislation*.

Bhagwati, J. observed :

> "What we are concerned with here is not the wise construction to be put on the term 'industry' as such but whether the raw materials of an industry which form an integral part of the process are within the topic of 'industry' for which forms the subject-matter of Item 52 of List I as ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in that topic and whether the Central Legislature while legislating upon sugar industry could, acting within the sphere of Entry 52 of List I, as well legislate upon sugarcane."(1)

The learned Judge stripped the argument naked and presented it for examination :

> "It was suggested that Item 52 of List I comprised not only legislation in regard to sugar industry but also in regard

(1) Ibid p. 414.

A to sugarcane which was an essential ingredient of the industrial process of the manufacture or production of sugar and was, therefore, ancillary to it and was covered within the topic. If legislation with regard to sugarcane thus came within the exclusive province of the Central Legislature, the Provincial Legislature was not entitled to legislate upon the B same..."(1)

The court was pressed to impart the widest amplitude to the topic 'industry' and take within its wings ancillary matters like raw materials of the industry :

C "It was, therefore, contended that the Legislation in regard to sugarcane should be considered as ancillary to the legislation in regard to sugar industry which is a controlled industry and comprised within Entry 52 of List I...."(2)

The edifice of exclusive Parliamentary jurisdiction so built stood D on shifting sands. The semantic sweep of Entry 52 did not come in the way of the State Legislature making laws on subjects within its sphere and not directly going to the heart of the industry itself. The key to the problem was furnished in *Tikka Ramji's case* (supra). After comparing the provisions of the U.P. Act there considered, which related to the regulation of sugarcane to factories and securing its E price to the grower from the occupier of the factory even by checking the accounts relating to the manufacture of sugar, the Court clinched the issue thus :

"This comparison goes to show that the impugned Act merely confined itself to the regulation of the supply and F purchase of sugarcane required for use in sugar factories and did not concern itself at all with the controlling or licensing of the sugar factories, with the production or manufacture of sugar or with the trade and commerce in, and the production, supply and distribution of sugar. If that was so, there was no question whatever of its trenching upon the jurisdic- G tion of the Centre in regard to sugar industry which was a controlled industry within Entry 52 of List I and the U.P. Legislature had jurisdiction to enact the law with regard to sugarcane and had legislative competence to enact the impugned Act."(3)

H (1) Ibid. p. 414.
(2) Ibid pp. 416-417.
(3) Ibid pp. 422-423.

Even the argument of repugnancy was repelled : A

> "The pith and substance argument also cannot be imported here for the simple reason that, when both the Centre as well as the State Legislatures were operating in the concurrent field, there was no question of any trespass upon the exclusive jurisdiction vested in the Centre under Entry 52 of List I, the only question which survived being whether, putting both the pieces of legislation enacted by the Centre and the State Legislature together, there was any repugnancy....."(1) B

C

This Court further quoted Sulaiman, J. In *Shyamakant Lal*(2) to lend strength to this latter limb of reasoning, where the learned Judge had laid down the principle of construction in situations of apparent conflict :

> "When the question is whether a Provincial legislation is repugnant to an existing Indian Law, the onus of showing its repugnancy and the extent to which it is repugnant should be on the party attacking its validity. There ought to be a presumption in favour of its validity, and every effort should be made to reconcile them and construe both so as to avoid their being repugnant to each other; and care should be taken to see whether the two do not really operate in different fields without encroachment. Further, repugnancy must exist in fact, and not depend merely on a possibility." D E

Tika Ramji notwithstanding, the contention was advanced by Sri Shanti Bhushan that industry was a pervasive expression, ambient enough to embrace raw materials used for the industry and so, sugar industry, as a topic of legislation, vested in Parliament exclusive power to legislate on sugarcane supplies to sugar factories, and, pursuing this expansionist logic, any taxation on supplies of cane to mills would be legislation on sugar industry. Ergo the Purchase Tax Act was a usurpation by the U.P. Legislature breaching the dykes of Art. 246(1) read with entry 52 of List I. He expanded on the theme by urging that any legislation which affected the sugar industry by taxing its raw materials was one *with respect* to that industry. The *Tikka Ramji* ratio is diametrically opposed to this reasoning and a ruling which has stood the field so long, has been followed by another Constitution F G H

(1) Ibid pp. 420-421.

(2) Ibid p. 427.

A Bench as late as 1973 in the *Kannan Devan case*(1), and its force of logic has our deferential assent and cannot be brushed aside by a mere appeal for reconsideration. Shri Shanti Bhushan candidly conceded that if *Tikka Ramji* were good law his submission was still-born. We agree.

B Industry as a legislative topic is of large and liberal import; true. But what peripherally affects cannot be confused with what goes to the heart. An acquisition of land *for* sugar mills or *of* sugar mills may affect the industry but is not an action in the legislative field forbidden for the States. [See the *Kannan Devan Hills Produce Company Ltd. case* (supra)]. Sales tax on raw materials going to a factory C may affect the costing process of the manufacture but is not legislation on industrial process or allied matters. Indeed, if the State Legislature cannot go anywhere near measures which may affect topics reserved for Parliament a situation of *reduction ad absurdum* may be reached.

The further refinement made by counsel that here was legislation D confined to factories and units only, the other buyers of sugarcane being left out, and that therefore the Act was in intent and effect one with respect to the sugar industry has no substance either.

For one thing, the bulk of the consumption of sugarcane was by factories and khandsari units only and the omission of trivial consumers did not mean that the legislation was not on sugarcane purchases E generally. Secondly, it was open to the legislature to make an intelligent choice of the persons on whom the tax should be imposed. Here, the bulk consumers were selected and the marginal buyers omitted. We discern nothing in this policy which legislates upon the sugar industry.

Before we move on to the submission as to the nature of the levy F being an excise duty, we may dispose of the little contention on alleged discrimination between sugar factories and khandsari units by the impost of differential rates of tax and more serious contention founded on the breach of Article 14 to the effect that when a purchase tax liability is computed by the weight of the case, as distinguished from its monetary value, there is an inevitable arbitrariness built into the G texture of the Scheme. If either of these submissions has substance, the tax in question must fall to the forces of Articles 14, 19 and 13, especially Art. 14, Art. 19 coming in only consequentially or where expropriation ensues.

Article 14, a great right by any canon, by its promiscuous forensic H misuse, despite the *Dalmia decision* has given the impression of being

(1) [1973] 1 S. C. R. 356.

the last sanctuary of losing litigants. In present case, the levy which is uniform on all sugarcane purchases, is attacked as *ultra vires,* on the score that the sucrose content of various consignments may vary from place to place, the range of variation being of the order of 8 to 10 per cent and yet a uniform levy by weight on these unequals is sanctioned by the Act. Price of cane is commended as the only permissible criterion for purchase tax. The whole case is given away by the very circumstance that, substantially, the sucrose content is the same for sugarcane in the State, the marginal difference being too inconsequential to build a case of discrimination or is blamable on the old machinery. Neither in intent nor in effect is there any discriminatory treatment discernible to the constitutional eye. Price is surely a safe guide but other methods are not necessarily vocational. It depends, practical considerations of the Administration, traditional practices in the Trade, other economic pros and cons enter the verdict but, after a judicial generosity is extended to the legislative wisdom, if there is writ on the status perversity, 'madness' in the method or gross disparity, judicial credulity may snap and the measure may meet with its funeral.

Even so, taxing statutes have enjoyed more judicial indulgence. This Court has uniformly held that classification for taxation and the application of Article 14, in that context, must be viewed liberally, not meticulously. We must always remember that while the executive and legislative branches are subject to judicial restraint,

> "the only check upon our exercise of power is our own sense of self-restraint."(1)

In the *Murthy Match Works*(2) case, this Court observed :

> "Certain principles which bear upon classification may be mentioned here. It is true that a State may classify persons and objects for the purpose of legislation and pass laws for the purpose of obtaining revenue or other objects. Every differentiation is not a discrimination. But classification can be sustained only if it is founded on pertinent and real differences as distinguished from irrelevant and artificial ones. The constitutional standard by which the sufficiency of the differentia which form a valid basis for classification may be measured, has been repeatedly stated by the courts. If it rests on a difference which bears a fair and just relation to the object for which it is proposed it is constitutional. To put it differently, the means must have nexus with the ends. *Even so, a large latitude is allowed to the State for classification upon a reasonable basis and what is reasonable*

(1) [1974] 3 S. C. R. 121.
(2) Ibid. p. 130.

A *is a question of practical details and a variety of factors which the court will be reluctant and perhaps ill-equipped to investigate.* In this imperfect world perfection even in grouping is an ambition hardly even accomplished. In this context, we have to remember the relationship between the legislative and judicial departments of government in the B determination of the validity of classification. Of course, in the last analysis courts possess the power to pronounce on the constitutionality of the acts of the other branches whether a classification is based upon substantial differences or is arbitrary, fanciful and consequently illegal. At the same C time, the question of classification is primarily for legislative judgment and ordinarily does not become a judicial question. A power to classify being extremely broad and based on diverse considerations of executive pragmatism, the judicature cannot rush in where even the legislature varily treads."

D The further challenge must be clarified here. Counsel submitted that unequals were being treated equally by a uniform purchase tax where equality would have dictated classification and taxation based on sucrose recovery from the cane or its market price. Even here, we may notice the observations in *Murthy Match Works* (supra).

E Another proposition which is equally settled is that merely because there is room for classification it does not follow that legislation without classification is always unconstitutional. The court cannot strike down a law because it has not made the classification which commends to the court as proper. How can the legislative power be said to F have been unconstitutionally exercised because within the class a sub-classification was reasonable but has not been made.

It is well established that the modern State, in exercising its sovereign powers of taxation, has to deal with complex G factors relating to the objects to be taxed, the quantum to be levied, the conditions subject to which the levy has to be made, the social and economic policies which the tax is designed to subserve, and what not. In the famous words of Holmes, J. in *Bain Peanut Co.* v. *Finson* :

'We must remember that the machinery of Government H would not work if it were not allowed a little play in its joints."(1)

(1) Ibid. 130/131.

It is well established that classification is primarily for the legislature and becomes a judicial issue only when the legislation bears on its bosom obvious condemnation by way of caprice or irrationality.

We have discussed earlier the history of legislative control, the imposition of tax or cess by weight of cane and the acceptance of that methodology all through the decades without demur by the Trade. Moreover, this Court has negatived an identical argument in a case from Andhra Pradesh (where also a similar levy based on weight of sugarcane is extent) in *Andhra Sugar Ltd. & Anr. etc.* v. *State of Andhra Pradesh & Ors.*(1) The Court there observed :

> "Mr. Setalvad submitted that there can be no levy of a purchase tax with reference to the tonnage of the cane. We cannot accept this contention. Usually the purchase tax is levied with reference to the price of the goods. But the legislature is competent to levy the tax with reference to the weight of the goods purchased.
>
> The contention of Mr. Chatterjee that a purchase tax must be levied with reference to the turnover only is equally devoid of merit. Where the purchase tax is levied on a dealer, the levy is usually with reference to his turnover, which normally means the aggregate of the amounts of purchase prices. But the tax need not necessarily be levied on a dealer or by reference to his turnover. It may be levied on the occupier of a factory by reference to the weight of the goods purchased by him."

Maybe, the discussion is brief but the conclusion is sound, and we concur. Tax on sale or purchase must be on the occurrence of a taxing event of sale transaction. Beyond that is left to the free play of the legislature, subject, of course, to the contra-indications about capricious, arbitrary or irrational features. It is a superstition, cultivated by familiarity, to consider that all sales-tax must necessarily have nexus with the price of the commodity. Of course, price as basis is not only usual but also safe to avoid uneven, unequal burdens, although it is conceivable that a legislature can regard prices which fluctuate frequently, as too impractical to tailor the purchase tax. It may even be, in rare cases, iniquitous to link purchase tax with price, if more sensible bases can be found. Supposing a legislature classifies sales-tax on the basis of human categories and reduces the rate or exempts the tax in respect of abject destitutes, or starving flood

(1) [1968] 1 S. C. R. 705.

A victims or notoriously hazardous habitations, with respect to necessity of life. Such differentiation cannot be castigated as discrimination out of hand. Of course, it is common and commonsense that reliable standard is the price, although in regard to customs duties there are still items levied on the nature of the goods rather than its value in money. For the present, it is sufficient to state that the practice B has been to impose purchase tax by weight of cane. Also, in weight of cane its sucrose content and its price have a close nexus, although, theoretically, they may appear unconnected. The High Court has stated that the quantity crushed, the sugar produced and the profits earned, have a substantial linkage. The quality of cane over the C whole of Uttar Pradesh varies over a range of 8 to 10 per cent which, if converted to purchase tax, may inflict a trivial difference per quintal. Moreover, for many years past the bulk of the sugar has been absorbed by 'levy' by the State and in the costing components the State, as buyer of sugar, has borne the burnt. We have no facts to hold that arbitrary or vagarious burdens are cast because weight, not price, has D been the yardstick for tax.

Fine-tuning to attain perfect equality may be a fiscal ideal but, in the rough and tumble of work-a-day economics, the practical is preferred to the ideal, provided glaring caprice or gross disparity does not make the levy arbitrary or frolicsome. Article 14 is not intellec- E tual chess unrelated to actual impact or the wear and tear of life but even-handed justice with some play in the joints.

Sri Mridul, one of the advocates appearing for the appellants, made a naive presentation that equality is inflexible as enshrined in Article 14 and so the differential in rate of tax as between sugar mills and F khandsari units is bad. The plea that infants and adults, weeklings and strongmen, paupers and princes should be put on a par lest legislative validity be imperilled has an elitist merit but sounds like an *argumentum ad absurdum* in the context of social justice. Unequals cannot be treated equally since mechanical uniformity may become un- G mitigated injustice. Khandsari units are cottage industries unlike sugar factories and need legislative succour for survival. Their economy justifies State action, classifying them as apart from factories and we fail to appreciate the flaw in the scheme on this score.

Reference to *K. T. Moopil Nair's case* was made at the bar to per- H suade us that unequals cannot be tortured into equality—a vice which stultifies the soul of Article 14 as Anatole France exposed in his *sardom epigram* that 'the law, in its majestic equality, forbids the

ich as well as the poor to sleep under bridges, to beg in the streets, A
nd to steal bread'. We are sure that equality has two sides, both important, and *Moopil Nair* adverted to one of the facets. Nothing more can be squeezed out of that case. The inequality of situation, in the total conspectus of socio-economic facts and human condition, must be striking and the unjust equality the rule forces down on unequals must be glaring. In taxation, the many criteria of intrinsic B
intricacy and pragmatic plurality persuade the Court, as a realist instrument and respecter of the other two branches, to allow considerable free play although never any play for caprice, *mala fides* or cruel recklessness in intent and effect.

Sri Malhotra, counsel for some appellants, explored beyond Sri C
Shanti Bhushan, the 'excise' argument in detail, read to us several sections and rules which enables the tax authorities to keep effective track of and control over the sugar in the factories to the extent needed for recovery of the tax. Nothing in these provisions regulates or controls the industry itself nor exacts any levy on the manufacture of sugar or D
its wider ramifications. Nothing more than prevention of escapement of purchase tax on cane is done and what is done is legitimately incidental to the taxing power. Peripheral similarity between purchase tax and excise levy does not spell essential sameness. Sugarcane tax operates in the neighbourhood of sugar excise but proximity is not identity. The tax is only on purchase of cane, not its conversion into E
sugar. If the miller has his own cane farm and crushes it, he has no purchase tax to pay but cannot escape excise duty, if any. Again, if cane is purchased by a miller and it is later robbed or destroyed before sugar is manufactured, the State tax is exigible although excise on production is not. A perspicacious appreciation of the implications of purchase and production dispels confusion on this issue. To F
buy raw produce is a step preliminary to manufacture but is not part of manufacture. Maybe, in some cases tax on such purchase and duty on manufacture therewith are so close that thin 'partition do their bounds divide' but how can we obliterate those bounds and telescope the two ?

All the appeals deserve to be and are dismissed with costs, one G
set.

N. K. A. *Appeals dismissed.*