Union Of India Vs. South Indian Sugar Mills Association Karnataka (sisma K)

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Court : Karnataka

Decided On : Sep-26-2024

Judge : Chief Justice and K. V. Aravind

Appeal No. : WA 1405/2024

Appellant : Union Of India

Respondent : South Indian Sugar Mills Association Karnataka (sisma K)

Judgement :

- 1 - NC:

2024. KHC:40132-DB WA No.1405 of 2024 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE26H DAY OF SEPTEMBER, 2024 PRESENT THE HON'BLE MR N. V. ANJARIA, CHIEF JUSTICE AND THE HON'BLE MR JUSTICE K V ARAVIND WRIT APPEAL No.1405 OF2024(GM-RES) BETWEEN:

1. UNION OF INDIA THROUGH ITS SECRETARY MINISTRY OF TEXTILES HAVING ITS OFFICE ADDRESS AT MINISTRY OF TEXTILES UDYOG BHAWAN NEW DELHI - 110011 EMAIL:secy-textiles@nic.in 2. UNION OF INDIA THROUGH ITS JOINT SECRETARY MINISTRY OF TEXTILES HAVING ITS OFFICE ADDRESS AT MINISTRY OF TEXTILES UDYOG BHAWAN NEW DELHI-110011 EMAIL :js-ajaygupta@gov.in BOTH THE APPELLANT NO.1 AND2ARE REPRESENTED BY APPELLANT NO.3

3. THE JUTE COMMISSIONER MINISTRY OF TEXTILES GOVERNMENT OF INDIA HAVING ITS OFFICE ADDRESS AT PATSAN BHAWAN, CF BLOCK - 2 - NC:

2024. KHC:40132-DB WA No.1405 of 2024 7TH AND8H FLOOR, ACTION AREA-1 NEW TOWN, KOLKATA700016 EMAIL:jcoffice@jutecomm.gov.in APPELLANTS (BY SRI. K. ARVIND KAMATH, ASGI A/W SRI AJAY PRABHU M., ADVOCATE) AND:

1. SOUTH INDIAN SUGAR MILLS ASSOCIATION KARNATAKA (SISMA K) HAVING ITS OFFICE ADDRESS AT :

33. 6, 1ST FLOOR FARAH WINS FORD INFANTRY ROAD, SHIVAJI NAGAR BENGALURU KARNATAKA- 560001 A SOCIETY DULY REGISTERED UNDER SECTION17OF THE KARNATAKA SOCIETIES REGISTRATION ACT, 1961 EMAIL:secsismak@gmail.com REPRESENTED THROUGH ITS SECRETARY AND AUTHORIZED REPRESENTATIVE: DR. SHANKARAYYA SALIMATH2 INDIAN JUTE MILLS ASSOCIATION THROUGH ITS DIRECTOR GENERAL CIN: U17232WB 1989 NPL047311 HAVING ITS REGISTERED OFFICE ADDRESS AT: BENGAL CHAMBER BUILDING DALHOUSIE AREA ROYAL EXCHANGE3D FLOOR6 NETAJ SUBHAS ROAD KOLKATA - 700001 EMAIL: ijma@ijma.org 3. DIRECTOR DIRECTORATE OF (SUGAR) SUGAR DEPARTMENT OF FOOD AND PUBLIC DISTRIBUTION - 3 - NC:

2024. KHC:40132-DB WA No.1405 of 2024 MINISTRY OF CONSUMER AFFAIRS FOOD AND PUBLIC DISTRIBUTION HAVING THE OFFICE ADDRESS AT: KRISHI BHAVAN NEW DELHI-110001 EMAIL: sangeet.cgda@nic.in THROUGH THE DIRECTOR (SUGAR) 4. JOINT SECRETARY (SUGAR) DEPARTMENT OF FOOD AND PUBLIC DISTRIBUTION MINISTRY OF CONSUMER AFFAIRS FOOD AND PUBLIC DISTRIBUTION HAVING THE OFFICE ADDRESS AT: KRISHI BHAVAN NEW DELHI-110001 EMAIL:ji-sugar@gov.in THROUGH THE JOINT SECRETARY (SUGAR) RESPONDENTS (BY SRI UDAYA HOLLA, SENIOR ADVOCATE A/W SRI MOHAN KUMARA B.M., ADVOCATE FOR C/RESPONDENTS SRI ABHRAJIT MITRA, SENIOR ADVOCATE A/W SRI SHRAVAN S. LOKRE, ADVOCATE FOR R2, SRI DHYAN CHINNAPPA, SENIOR

ADVOCATE A/W SRI GAUTAM SHAH AND MS. SANJANA DUA, ADVOCATES FOR IMPLEADING RESPONDENT No.5) THIS WRIT APPEAL FILED U/S4OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE IMPUGNED

ORDER
DATED0509.2024 PASSED IN WP No.23927/2024 (GM-RES) BY THE LEARNED SINGLE JUDGE OF THIS HONBLE COURT THEREBY STAYING THE NOTIFICATIONS BEARING No.S.O. 5459 (E) DATED2612.2023 AND S.O. 2500 (E) DATED2806.2024 ISSUED BY THE APPELLANT No.1 AND ETC. THIS APPEAL, COMING ON FOR

ORDER
S, THIS DAY,

JUDGMENT
WAS DELIVERED THEREIN AS UNDER: - 4 - NC:

2024. KHC:40132-DB WA No.1405 of 2024 CORAM: HON'BLE THE CHIEF JUSTICE MR. JUSTICE N.V. ANJARIA and HON'BLE MR JUSTICE K V ARAVIND ORAL

JUDGMENT
(PER: HON'BLE THE CHIEF JUSTICE MR. JUSTICE N.V. ANJARIA) Preferred by the Union of India, the challenge in this appeal is addressed to order dated 5th September 2024 passed by learned Single Judge in the pending writ petition.

2. The prayer in the writ petition filed by the petitioner- South Indian Sugar Mills Association, Karnataka-respondent No.1 herein, was to set aside Notification dated 26th December 2023. Also was the prayer to direct the respondents to remove the sugar from the purview of the Jute Packaging Materials (Compulsory Use in Packing Commodities) Act, 1987. 2.1 By the said Notification dated 26th December 2023 of the Ministry of Textiles, issued in exercise of powers conferred under Section 3 of the Jute Packaging Materials (Compulsory Use in Packing Commodities) Act, 1987 - 5 - NC:

2024. KHC:40132-DB WA No.1405 of 2024 (hereinafter referred to as JPM Act), it is provided that 100% food grains and 20% sugar of the total production shall be required to be packed in jute packaging material manufactured in India from raw jute production in India. 2.2 Learned Single Judge passed interim order dated 5th September 2024 and stayed the Notifications dated 26th December 2023 which was valid upto June 2024 and the subsequent notification dated 28th June 2024 whereby the period of validity of the notification came to be extended upto 30th September 2024. 2.3 While examining the challenge to the impugned order of learned Single Judge, the court is aware that the order under challenge is an interim order. Learned Single Judge stayed the Notification which was the principal prayer in the petition. The writ petition was ordered to be posted next on 24th September 2024. 2.4 It may be true that ordinarily the writ appeal would not be entertained against interim orders, for, by their very nature, the interim orders do not determine the final rights - 6 - NC:

2024. KHC:40132-DB WA No.1405 of 2024 of the parties. It is true that pure and simplicitor interim orders could not be termed as a judgment to be entertained in appeal. However, the orders, even if interim, but which have the trappings of finality, would be treated as judgment, liable to be examined in the appeal for their merits, and the appeal would maintain thereagainst. 2.5 Recent decision of the Supreme Court in Shyam Sel and Power Limited vs. Shyam Steel Industries Ltd. [(2023) 1 SCC634, deserves to be referred to. The Apex Court discussed therein, in the context of Clause 15 of the Letters Patent Appeal of Calcutta High Court, as to which type of order could be classified as judgment for the purpose of intra court appeal. Addressing the question when can an order be construed as 'judgment' under clause 15 of the Letters Patent, it was observed that orders in order to be amenable to Letters Patent jurisdiction must have been such possessing the quality of finality. 2.6 In Shyam Sel and Power Limited (supra), the Supreme Court observed thus, - 7 - NC:

2024. KHC:40132-DB WA No.1405 of 2024 "It could thus be seen that though this Court has held that the term judgment used in Letters Patent could not be given a narrower meaning as is given to the term judgment used in CPC and that it should receive a much wider and more liberal interpretation, however, at the same time, each and every order passed by the trial judge could not be construed to be a judgment inasmuch as there will be no end to the number of orders which would be appealable under the Letters Patent. It has been held that the word judgment has undoubtedly a concept of finality in a broader and not in a narrower sense. It has been held that where an order vitally affects a valuable right of the defendants, it will undoubtedly be treated as a judgment within the meaning of Letters Patent so as to be appealable to a larger Bench."

(para

18) 2.7 It was thus held that whether the order could be said to be a 'judgment' within the scope of Clause 15 of the Letters Patent, would depend on the facts and circumstance of each case. It was observed and held that for such an order to be considered as judgment, it must have 'traits and trappings' of finality. 2.8 Reverting to the present challenge, when the main prayer in the petition is to set aside the Notification, which very Notification is stayed during the pendency of the writ - 8 - NC:

2024. KHC:40132-DB WA No.1405 of 2024 petition, it could be well said that the order staying the Notification has the trait and trapping of finality. 2.9 In the above view, this Court is inclined to proceed to examine the challenge to the interim order of the learned Single Judge.

3. The case of the original petitioner in the writ petition challenging the validity of the Notifications, briefly stated, is inter alia that the impugned Notification was issued by respondent No.1-Union of India, without taking into consideration the recommendations of the expert committees, that the primary concerns associated with packaging of sugar in the jute bags, such as non-preference by bulk consumers, possibility of contamination, unhygienic state of jute bags, batching oil contamination, etc. are ignored. The Notifications are issued mechanically and without application of mind, it is contended that only 20% reservation for sugar is applied in blanket manner since 2013-14 and that it is contrary to Section 3 of the JPM Act.-. 9 - NC:

2024. KHC:40132-DB WA No.1405 of 2024 3.1 It was stated that the Notification dated 26th December 2023 was made valid till 30th June 2024, later extended on 28th June 2024, till 30th September 2024 and that it was not based on the Standing Advisory Committees recommendations. The Standing Advisory Committee is constituted under Section 4 of the Act. Respondent No.1, it was further contended in the petition, disregarded the recommendations of the Standing Advisory Committee in its 29th Meeting held on 21st June 2021 and 30th meeting held on 21st July 2022 to complete exempt sugar from the purview of JPM Act. It was contended that the JPM Act has outlived its utility in respect of compulsory packaging of sugar in the jute bag is concerned. 3.2 Learned Single Judge while staying the Notifications dated 26th December 2023 and 28th June 2024, rested his reasoning as under, found in paragraph 6 of the order, 6. Sugar is highly sensitive to moisture, which can cause it to clump, harden, or dissolve, thereby affecting its quality and shelf life and potentially leading to contamination. Since jute is a porous material and can absorb moisture from the environment, and the batching oil which is used for manufacture of jute bag is - 10 - NC:

2024. KHC:40132-DB WA No.1405 of 2024 tumorigenic, the petitioner has made out a prima facie case for the grant of an interim order.

4. Assailing the impugned interim order staying the Notifications, learned Additional Solicitor General for India Mr. K. Arvind Kamat for appellant-Union of India, prefacing his submissions, took the Court through the scheme of the Jute Packaging Materials Act, 1987 to submit that the Act was enacted to provide for compulsory use of jute packaging material in supply and distribution of certain commodities. The law was enacted, it was submitted, in order to protect the interest of persons engaged in the raw jute production and the jute industry, which industry occupies significant position in national economy. The validity of the JPM Act, 1987 has been upheld by the Apex Court in Dalmia Cement (Bharat) Ltd. v. Union of India and others [(1996) 10 SCC104, it was submitted. 4.1 It was highlighted that Section 4 of the JPM Act deals with the constitution of Standing Advisory Committee by the Central Government to give advice in the matter and while indicating its recommendations, the factors and - 11 - NC:

2024. KHC:40132-DB WA No.1405 of 2024 considerations mentioned in sub-section (2) of Section 4 of the JPM Act are taken into account. Section 3 of the Act deals with the power to specify commodities which are required to be packed in jute packaging material. Section 5 is another statutory prescription which contemplates prohibition of packing in any material other than the jute packing material. 4.1.1 Following contentions were raised by learned Additional Solicitor General for India for the appellant, (i) The Notifications are in the nature of policy decisions, and administrative act. The Notifications are issued by complying with, and under the provisions of the Jute Packaging Materials (Compulsory Use in Packing Commodities) Act, 1987. (ii) The Minutes of 31st meeting of the Standing Advisory Committee (SAC) held on 26th May 2023, show that the stakeholders including the petitioner-Sugar Mills Association were heard for their suggestions and inputs and that they were even considered by the Committee. The demand - 12 - NC:

2024. KHC:40132-DB WA No.1405 of 2024 supply aspect of jute bags was revisited with by the SAC, as found in paragraph 5 of the Minutes of the meeting. The Notification dated 26th December 2023 was issued pursuant to recommendation by Advisory Committee in its 31st Meeting. (iii) The Advisory Committee in its Minutes discussed the availability of jute material and other attendant aspects, for which paragraph 5 and 9 to 11 of the Minutes were relied on. The Advisory Committee recommended that 100% food grains and 20% of the sugar production may be reserved for packaging in jute bags. (iv) The packaging in jute bags is prescribed for certain categories only. The bulk consumers are exempted. (v) The exercise of issuing Notification is statutory exercise based on the recommendation of the Standing Advisory Committee which decides on the basis of material and that it is an expert body. The scope of judicial review is extremely limited.-. 13 - NC:

2024. KHC:40132-DB WA No.1405 of 2024 4.2 Learned Senior Advocate Mr. Mitra Abhrajit Mitra with learned Advocate Mr. Shravan Lokre for respondent No.2-Indian Jute Mills Association supported and adopted the submission made on behalf of Union of India. He additionally submitted that the impugned Notifications are continuation of the previous Notifications of 31st March 2023 and subsequent, in which it was similarly stipulated as consistent policy that 20% sugar production should be packed in the jute bags, however the earlier Notifications have not been questioned. 4.3 Learned Senior Advocate Mr. Udaya Holla proceeded to elaborate his submissions raising the following aspects to justify the impugned order, (i) The recommendations of the SAC has to base on the matters provided in sub-clauses (a) to (g) of Section 4 of the JPM Act. They are disregarded. The 29th and 30th Meetings of Advisory Committee favoured exemption of sugar from jute packaging. The 31st Meeting distracted in its - 14 - NC:

2024. KHC:40132-DB WA No.1405 of 2024 recommendations and its recommendations had no nexus with the matters considered by it. (ii) The reservation of 20% sugar to be packed in the jute bags as contemplated in the impugned Notification is not backed by any reasons and is a departure from earlier recommendations. The 31st Meeting recommendation the reservation of 20% after a gap of two years without application of mind. The consideration of shortage of jute bags ought to have gone into the decision of the Committee. Para 6 of the Minutes of 30th Meeting was relied on, in which it was stated that demand of jute bags was more than supply and that there was no change in that position. (iii) The other commodities like cement and fertilizer have been excluded. The jute packaging material has acted as barrier to the technological advancement and product diversification, although it might have created assured demand for jute packing. Report by the Commission of Agricultural Cost and Prices, Department of Agriculture and Farmers Wealth, Government of India supports the view.-. 15 - NC:

2024. KHC:40132-DB WA No.1405 of 2024 (iv) Importance of sugar industry in the national economy was highlighted to submit that the demand for sugar has increased which is to be met by surplus energy to be produced by the industry. Use of jute bags has the effect of escalation in the total cost of the sugar. Reliance was placed on the report of the Committee on Regulation of Sugar Sector in India-the way forward (Annexure-C in the main petition). (v) The use of jute batching oil in the jute bags has carcinogenic consequential effects. Investigative report of Lund University was relied on. Jute bags has also tendency of absorbing the moisture. (vi) All the above factors operate adverse. The Notifications dated 26th

December 2023 and 28th June 2024 are unwarranted and illegal exercise by the Ministry of Textile. 4.4 Learned Senior Advocate Mr. Dhyan Chinnappa for the newly impleaded respondent- Indian Sugar Mills Association - 16 - NC:

2024. KHC:40132-DB WA No.1405 of 2024 submitted that except Standing Advisory Committee, none wants that the sugar should be packed in the jute bags. Every study has shown, it was submitted, the minus points for packing the sugar in the jute bags. It was next submitted that three aspects namely moisture absorption, health consideration and weight of the bags are relevant but not considered by the Advisory Committee. Learned Advocate then relied on the Minutes of the 30th Meeting of the Advisory Committee, relied on paragraphs 5, 7 and 8 thereof to submit that the providence of 20% cap is unjustified on facts. He also wanted to highlight the figures of the production and supply of the jute bags. He highlighted the objections raised by the respondent impleaded herein before the Committee in 31st Meeting. 4.4.1 The learned Senior Advocate for the above respondents relied on the decision of the Gujarat High Court in Gujarat State Sugar Federation Ltd. v. Union of India [2006 SCC Online Guj 564: (2007) 2 GCD1233, for the observations in paragraphs 32 and 33 thereof, to submit that it is incumbent on the part of the Standing Advisory - 17 - NC:

2024. KHC:40132-DB WA No.1405 of 2024 Committee to apply its mind afresh every year and the last years jute policy cannot be followed mechanically. 4.4.2 In Gujarat State Sugar Federation Ltd. (supra), the Court found on facts that extraneous considerations weighed with the advisory committee in fixing 100% extent to be packed in jute bags.

5. For examining the challenge to the interim order of learned Single Judge staying the Notifications dated 26th December 2023 and 28th June 2024, this court prima facie considered the facts involved, the kind and nature of the controversy and the rival submissions advanced as above. 5.1 Certain aspects needs to be noticed. The JPM Act has an object to provide compulsory use of jute packaging material in the supply and distribution of certain commodities in the interest of production of raw jute and jute packaging material, to further encourage the livelihood sources of the persons engaged in the production thereof, and other matters connected. The

sugar is an essential commodity - 18 - NC:

2024. KHC:40132-DB WA No.1405 of 2024 defined in the Act which could be subjected to packing in the bags made of jute material. 5.2 Section 3 of the Act gives a power to specify commodities which are required to be packed in the jute packaging material. It will be useful to notice Section 3, reading as under, 3. Power to specify commodities which are required to be packed in jute packaging material.-(1) Notwithstanding anything contained in any other law for the time being in force, the Central Government may, if it is satisfied, after considering the recommendations made to it by the Standing Advisory Committee, that it is necessary so to do in the interests of production of raw jute and jute packaging material, and of persons engaged in the production thereof, by order published in the Official Gazette, direct, from time to time, that such commodity or class of commodities or such percentage thereof, as may be specified in the order, shall, on and from such date, as may be specified in the order, be packed for the purposes of its supply or distribution in such jute packaging material as may be specified in the order: Provided that until such time as the Standing Advisory Committee is constituted under section 4, the Central Government shall, before making any order under this sub-section, consider the matters specified in sub-section (2) of section 4, and any order so made shall cease to operate at the expiration of three months from the date on which the Standing Advisory Committee makes its recommendations.-. 19 - NC:

2024. KHC:40132-DB WA No.1405 of 2024 (2) Every order made under sub-section (1) shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the order or both Houses agree that the order should not be made, the order shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that order. 5.2.1 Section 4 deals with the constitution of Advisory Committee. Section 4(1) provides that the Central

Government with a view to determine the commodity or class of commodities in respect of which the jute packing material shall be used in the packing, shall constitute a Standing Advisory Committee. Section 4 reads as under, 4. Constitution of Standing Advisory Committee.-(1) The Central Government shall, with a view to determining the commodity or class of commodities or percentages thereof in respect of which jute packaging material shall be used in their packing, constitute a Standing Advisory Committee consisting of such persons as have, in the opinion of that Government, the necessary expertise to give advice in the matter.-. 20 - NC:

2024. KHC:40132-DB WA No.1405 of 2024 (2) The Standing Advisory Committee shall, after considering the following matters, indicate its recommendations to the Central Government, namely:- (a) the existing level of usage of jute material; (b) the quantity of raw jute available; (c) the quantity of jute material available; (d) the protection of interests of persons engaged in the jute industry and in the production of raw jute; (e) the need for continued maintenance of jute industry; (f) the quantity of commodities which, in its opinion, is likely to be required for packing in jute material; (g) such other matters as the Standing Advisory Committee may think fit. 5.3 A first hand analysis of the above provisions would go to show that Section 3 makes it legislatively incumbent on the Central Government to specify commodities as may be classified to be packed in the jute packing material. The exercise has been undertaken by the statutory expert Standing Advisory Committee constituted under Section 4 of the Act. Whereas Section 3 is a kind of plenary mandate, sub-clauses (a) to (g) of sub-Section (2) of Section 4 indicate the matters to be considered by the Standing Advisory Committee while making recommendations. 5.3.1 In other words, the exercise of issuance of Notification stipulating any commodity or class of commodity to the - 21 - NC:

2024. KHC:40132-DB WA No.1405 of 2024 packed in the jute bags is statutory as well as an exercise in the expert domain. The Standing Advisory Committee is an expert body which makes recommendations after taking into account the relevant factors and the considerations. 5.3.2 Section 16 of the Act is a power to exempt. If the Central Government is of the opinion that it is necessary or expedient in public interest, it may exempt person or class of persons supplying or distributing any commodity or class of commodities from operation of an order made under Section 3 of the Act. 5.4 It could be well countenanced, atleast as a prima facie view, the submission on behalf of the Union of India when it was submitted that the decision arrived at under the Act by invoking section 3 read with Section 4 and the consequential issuance of Notification specifying the commodity or the extent of commodity to be packed in the jute bags, is a policy decision. The factors relevant in the realm on the policy in relation to the subject matter have gone into - 22 - NC:

2024. KHC:40132-DB WA No.1405 of 2024 consideration of the decision makers who function as an expert Advisory Committee. 5.5 Looking at the decisional exercise by the Standing Advisory Committee, it could be noticed from the contents of the Minutes of the Meeting both 30th as well as 31st Meeting and as a matter of fact, from the previous meeting minutes, that the considerations which went into the decision making process leading to the notifying the prescription to pack 20% sugar production in the jute bags were relevant aspects and relevant considerations based on the material. In paragraph 6 of the Minutes of the 30th Meeting dated 21st July 2022 (page No.122 of the compilation), the Jute Committee figures were considered and it was noted that demand of jute bags was more than supply. At that stage, it was contemplated to exempt the sugar. It was decided to keep out of purview of reservation under the Act, the packaging of the export commodities, the small consumer packs of 10 kilograms and below for food grains and bulk packaging of more than 100 kilograms.-. 23 - NC:

2024. KHC:40132-DB WA No.1405 of 2024 5.5.1 In the 31st Meeting of the Standing Advisory Committee subsequently held on 26th May 2023 the aspects were again discussed threadbare, they were highlighted with reference to the facts and figures available, in paragraph 5 of the Minutes (page No.200). It is to be noted that the stakeholders including Indian Sugar Mills Association had submitted their objections and suggestions which were taken into account. 5.5.2 After deliberations, the Committee made recommendations commodity-wise, as per paragraph 11 (page No.202), They are expert recommendations after seeking objections and participation from the stakeholders, reproduced herein for ready reference, 11. After taking into account the deliberations and the facts submitted before the Committee, the SAC recommended the following commodity- wise reservation norms under the JPM Act, 1987:- Foodgrains and Sugar:

100. of the foodgrains and 20% of Sugar production may be reserved for packaging in jute bags. The provision of indenting 10% jute bags through GeM would be kept.-. 24 - NC:

2024. KHC:40132-DB WA No.1405 of 2024 Further, in case of any shortage or disruption in supply of jute packaging material or in case of any other contingency or exigency, the Ministry of Textiles may, in consultation with the user Ministries concerned, allow further dilution of packaging material up to a maximum of 30% of the total procurement of jute bags by SPAs/FCI in the whole jute year. In case the Procurement Agencies do not place indents for jute bags to pack foodgrains as per supply plan prepared by Department of Food and Public Distribution and bunching of demand (indents) takes place then the jute mills shall get reasonable additional time for the supply of jute bags; provided that if the mills fail to supply the bags in the extended period, the conditions relating to dilution shall be applicable. Exemptions: The following may be kept out of the purview of reservation under the JPM Act:- i. Packaging for export of commodities; (ii) Sugar fortified with vitamins; (iii) Small consumer packs of 10 kgs and below for foodgrainsand 25 kgs and below for sugar; (iv) Bulk Packaging of more than 100 kgs; (v) Sugar packed for export but which could not be exported on the basis of an assessment and recommendation by the D/o Food & Public Distribution. 5.6 The above decision of the expert Advisory Committee became basis for issuance of Notification dated 26th - 25 - NC:

2024. KHC:40132-DB WA No.1405 of 2024 December 2023 which was made operational upto 30th June 2024. Thereafter, Notification dated 28th June 2024 was issued and the stipulation for packing 20% sugar production in the jute bags came to be extended till 30th September 2024. 5.7 The impugned Notifications issued by the Ministry of Textile, Union of India is a policy making exercise translated into statutory function under the Act. The decision is of the expert Advisory Committee under the statute. The various grounds raised by the respective respondents to question the issuance of Notifications and the stipulation therein about the mandate of packing the sugar in the jute bags, are essentially and for all purposes, objections in relation to the policy decision. They are in the nature of pros and cons in respect of policy. Indeed, the reasons given by learned Single Judge in para 6 of the interim order exceeds the parameters and the circumstance of judicial review, and also travels into policy issues.-. 26 - NC:

2024. KHC:40132-DB WA No.1405 of 2024 5.7.1 The scope and ambit of judicial review as well as the parameters to be applied would remain extremely limited for the Court, when it comes to examining the policy of the State or the decisions which are in the policy realm. Whether the policy decision is outrightly unreasonable, arbitrary or is based on thoroughly irrelevant considerations, and for that purposes may fall within the permissible parameters and purview of judicial review, is the question needs to be examined by going in detail into the relevant aspects and the principles in law governing on that score. It is not possible to come to an immediate conclusion which would justify the stay of the policy Notifications, when the challenge thereto is at large in the writ petitions, still to be considered on merits. 5.8 On all the aforesaid counts, it is entirely possible to take a view that what is contended on behalf of the appellant-Union of India makes out a prima facie case for them to successfully call in question the interim order of stay of the Notification.-. 27 - NC:

2024. KHC:40132-DB WA No.1405 of 2024 6. All the above aspects highlighted in paragraphs 5.1 onwards, which were, although considered prima facie by this Court, at this stage, are material aspects. They were ought to have been considered and given due regard by learned Single Judge, however they came to be overlooked and the interim order of the kind and nature above was passed staying the Notifications.

7. In Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd., & Others (1985) 1 SCC260 the Honble Supreme Court observed, Interim orders must be made under Article 226 against public authorities where gross violations of the law and injustices are perpetrated or are about to be perpetrated, or where denial of interim relief may lead to public mischief, grave irreparable private injury or shake a citizen's faith in impartiality of public administration. But since the law presumes that public authorities function properly

and bona fide with due regard to the public interest, a court must be circumspect in granting interim orders of far-reaching dimensions of orders causing administrative, burdensome inconvenience or orders preventing collection of public revenue for no better reason than that the parties have come to the court alleging prejudice, inconvenience or harm and that - 28 - NC:

2024. KHC:40132-DB WA No.1405 of 2024 a prima facie case has been shown. There can be and there are no hard and fast rules. But prudence, discretion and circumspection are called for. (Para

5) 8. It is also to be noted that Notification dated 31st Mary 2023 was issued providing similar stipulation about the packaging of sugar in the jute bags which was valid upto 30th June 2023. On 14th June 2023, by another Notification, the Ministry of Textiles extended the same upto 30th September 2023. On 26th September 2023, Notification was issued extending the period upto 31st December 2023. Thereafter, the impugned Notifications dated 26th December 2023 and 28th June 2024 came to be issued continuing the requirement.

9. Another aspect which has a bearing on the grant of interim stay of Notifications deserves to be noticed. Notification dated 26th December 2023 is challenged. It was valid upto 30th June 2024. Further Notification which is also under challenge is dated 28th June 2024, whereby the period of validity of the Notification came to be extended upto 30th September 2024. The writ petition was filed on 22nd August - 29 - NC:

2024. KHC:40132-DB WA No.1405 of 2024 2024, in other words, the petition came to be filed after the expire of validity of Notification dated 26th December 2023. The petitioner had no grievance till that date. Subsequent extending Notification dated 28th June 2024 was issued. The petitioner had no grievance even upto that date. 9.1 When the petition was filed on 22nd August 2024 little more than a month was left as the Notification dated 28th June 2024 contemplated extension of period upto 30th September 2024. The petitioner thus sat tight and were never serious since from the date when Notification dated 26th December 2023 was issued. The validity period of the said Notification was already expired and new Notification dated 28th June 2024 was already issued when the petition was filed on 22nd August 2024. This lethargical approach itself would have disentitled the petitioner to get any interim stay.

10. In addition to all the above reasons and considerations, a weighty principle of law is disregarded by the learned Single Judge in granting interim stay of the Notifications.-. 30 - NC:

2024. KHC:40132-DB WA No.1405 of 2024 The very Notifications dated 26th December 2023 and 28th June 2024 are prayed to be set aside as a principal relief in the petition. It is well settled principle that interim relief in the nature of principal, cannot be granted by the Court. In the present case, granting of interim stay against the Notification tantamount to granting of the main relief prayed for in the petition. 10.1 In Purshottam Vishandas Raheja and Another vs. Shrichand Vishandas Raheja (2011) 6 SCC73 it was observed that interim injunction should not amount to granting a pre-trial decree. In Secretary, Union Public Service Commission and Another Vs. S. Krishna Chaitanya (2011) 14 SCC227 the Honble Supreme Court re-iterated the Principal, the following statement of law was observed by the Supreme Court, We reiterate that normally at an interlocutory stage no such relief should be granted that by virtue of which the final relief, which is asked for and is available at the disposal of the matter is granted. - 31 - NC:

2024. KHC:40132-DB WA No.1405 of 2024 10.2 In Mahima Savin Bansal Vs. Savin Bansal and Others (2015) 16 SCC228 the Honble Supreme Court referred to its own decision in Hema Mishra v. State of U.P. and others [(2014) 4 SCC453 and in State of Orissa v. Madan Gopal Rungta [AIR 1952 SC12, to reiterate the principle that Article 226 cannot be used for the purpose of giving interim relief has the only and final relief. The High Court had purported to do so on the application which was disapproved by the Supreme Court. It was observed that an interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of rights. 10.3 It was in Bank of Maharashtra v. Race Shipping and Transport Co. Pvt. Ltd., [AIR 1995 SC1368, the Supreme Court affirmed the principle that interim orders which given principal relief cannot be granted The practice of passing such orders was deprecated by the Apex Court, Time and again this Court has deprecated the practice of granting interim orders which practically give the principal relief sought in the petition for no better reason than that a prima facie case has been made out, without being - 32 - NC:

2024. KHC:40132-DB WA No.1405 of 2024 concerned about the balance of convenience, the public interest and a host of other considerations. [See: Assistant Collector of Central Excise, West Bengal v. Dunlop India Ltd. (1985) 1 SCC260at P. 265 : (AIR 1985 SC330at P.

333) State of Rajasthan v. M/s. Swaika Properties (1985) 3 SCC217at P224: (AIR 1985 SC1289at P. 1292), Relied on.]. (para

12) 10.4 The above cardinal principle that principal relief cannot be granted at the interim stage is ignored by learned Single Judge. The interim relief which amounts to granting of main relief cannot be given, unless extraordinary grounds and circumstances exist. No such special ground exists in the facts of the instant case which could have permitted learned Single Judge to pass the interim order of the nature of final relief. 10.5 In that view and for all the foregoing reasons and discussion, the learned Single Judge in passing the impugned interim order to stay the Notifications, committed an error in the nature of error of jurisdiction. The impugned order stands unsustainable in the eye of law.-. 33 - NC:

2024. KHC:40132-DB WA No.1405 of 2024 10.6 All observations and expressions made herein are for the purpose of present challenge only. They do not have reflection on final merits at large before learned Single Judge in dealing with the writ petition finally.

11. As a result, the order dated 5th September 2024 passed by the learned Single Judge in Writ Petition No.23927 of 2024 is hereby set aside. The appeal stands allowed. Sd/- (N.V. ANJARIA) CHIEF JUSTICE Sd/- (K.V. ARAVIND) JUDGE DDU FURTHER

ORDER

At this stage, learned Senior Advocate Mr. Udaya Holla for the original petitioner prayed for stay of the aforesaid order in order to enable the petitioner-respondent herein to approach the higher forum.-. 34 - NC:

2024. KHC:40132-DB WA No.1405 of 2024 In the facts of the case and in view of what is reasoned and held hereinabove, the request could not be acceded to. The same is rejected. Sd/- (N.V. ANJARIA) CHIEF JUSTICE Sd/- (K.V. ARAVIND) JUDGE DDU