

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2012

CORAM:

THE HONOURABLE MR.JUSTICE K.CHANDRU

W.P.Nos.8780 and 10091 of 2008 and

M.P.Nos.1 and 1 of 2008

R.Dharuman

.. Petitioner in W.P.No.8780/2008

K.B.Bojan

.. Petitioner in W.P.No.10091 of 2008

Vs.

1.The Union of India,
rep by its Secretary to Government,
Ministry of Commerce,
Central Secretariat,New Delhi.

2.The State of Tamil Nadu,
rep by the Chief Secretary to Government,
Fort St. George, Chennai-600 009.

3.The Tea Board of India,
No.14, B.D.M.Sarani,
Kolkatta, rep by its Chairman.

4.The Collector,
Nilgiris District,
Udhagamandalam,
The Nilgiris.

.. Respondents in both writ petitions

Both these writ petitions are preferred under Article 226 of the Constitution of India praying for the issue of a writ of mandamus to direct the first respondent to exercise power under subsection (1) & (2) of Section 30 of the Tea Act, 1953 to fix the minimum price of green tea leaf payable to the petitioners being small tea growers in the Nilgiris, Tamil Nadu.

For Petitioners : Mr.R.Sivakumar

For Respondents : Prof.C.S.Sundararaj,
Spl.C.G. For R-1
Ms.M.E.Raniselvam, AGP
for RR2 and 4
Mr.S.Srinivasan for R-3

COMMON ORDER

In both the writ petitions, the relief claimed by the petitioners are identical. They sought for a direction to the Union of India to exercise power under Sub-Sections 1 and 2 of Section 30 of Tea Act, 1953 to fix the minimum price of green tea leaf payable to the petitioners, being small tea growers in the district of Nilgiris.

2. The petitioner in the first writ petition is a retired Government Employee owning a small tea garden, to the extent of 1.5 acres at Kekkatty Village, Nilgiris District. The petitioner in the second writ petition is a practising Advocate owning a small tea garden to the extent of 1.5 acres at Kotagiri, Nilgiris District.

3. The first writ petition was admitted on 10.04.2008 and the second writ petition was admitted on 25.04.2008. Though the petitioners claim interim relief of direction to the respondents to fix minimum price of green leaf tea payable to Small Tea Growers on the basis of the report of the Committee constituted by the Government, only notice was ordered in both miscellaneous petitions.

4. On notice from this Court, a counter affidavit dated 02.07.2012 was filed in both writ petitions by the third respondent, Tea Board of India, having headquarters at Kolkatta. On a direction from this Court, a copy of the report submitted by Institute of Cost and Works Accountants of India (ICWAI) was produced by the learned counsel for the third respondent.

5. Heard both sides.

6. Before proceeding to deal with the case of the petitioners, it must be noted that a writ petition with identical relief was filed by Nilgiris Tea Growers Protection Centre, represented by its Executive Committee Member in W.P.No.39192 of 2002. That writ petition was disposed of after notice to the respondents by a Division Bench vide order dated 15.06.2007. In that writ petition, in paragraphs 12 and 13, it was directed as follows:-

"12.Considering the facts and circumstances of the case and after going through the averments made by the petitioner and the respondents, we are not able to accept the submissions made by the learned counsel for the first respondent that it is not mandatory to fix the minimum price on tea leaves who manufactures green tea.

13.Therefore, considering the difficulty expressed by the petitioner in the affidavit with regard to fixation of minimum or maximum price as they are not able to compete with the tea merchants like Hindustan Lever, Tata and AVT and also due to change in circumstances, without expressing any opinion and the rival contentions, we consider it appropriate to direct the respondents to consider the representation made by the petitioner on 03.04.2002 and pass appropriate orders within a period of two weeks from the date of receipt of a copy of this order. With these observations, the writ petition is disposed of."

7. Subsequent to the disposal of the writ petition, the petitioner sent a letter to the Union of India enclosing a copy of the order passed by the Division Bench and requested the Union of India to consider his request by fixing the minimum price on Green Tea Leaf as directed by the Division Bench so as to save the lives of more than 60,000 families of small Tea Growers.

8. In the meanwhile, on behalf of the respondents, an application was filed to extend the time for complying with the direction issued by the Division Bench.

9. Subsequently, by an order dated 02.01.2008, the first respondent Union of India replied to the petitioner in the earlier writ petition. In paragraphs 3 and 4, it was stated as follows:-

3. For the compliance of the directions of the Hon'ble High Court the costing structure of tea industry needed to be studied. The Central Govt. directed the Tea Board to engage the services of the Institute of Cost and Works Accountants of India (ICWAI) to conduct study to ascertain the current cost of

producing tea leaf and the made tea with a view to take a decision in the matter. ICWAI has submitted its report in respect of small growers of Nilgiri area.

4. Based on the current findings on the cost of producing tea leaf and the cost of manufacturing made tea in the study report by ICWAI, the Central Government has decided to fix a price sharing formula between tea growers and the manufacturers in respect of Nilgiri areas in the ratio of 65:35. Tea Board has already issued necessary orders vide Notification No.12(23)/LC/P-VIII/2811 dated 1st January, 2008 to give effect to this formula for implementation w.e.f. 1.1.2008 in respect of Nilgiri Tea Growers and the Manufacturers (copy enclosed).

A copy of the proceedings sent by the third respondent dated 01.01.2008 was also enclosed.

10. In giving direction based upon the report submitted by ICWAI, it was directed as follows:-
"Further to Tea Board's OM no.12(23)/LC/ 2003/XII/3317 dated 19.01.2004 Tea Board engaged the Institute of Cost and Works Accountants of India to undertake another study during the year 2007 in relation to cost of production of tea leaf in small tea growers sector and cost of manufacturing made tea in bought leaf tea factories for all tea growing areas separately. The Institute of Cost and Works Accountants of India submitted a report only in respect of Nilgiri tea growing areas.

In view of the findings of the present study undertaken by Institute of Cost and Works Accountants of India and in exercise of powers conferred under para-30 of the Tea (Marketing) Control Order 2003 and with prior approval of Central Government, the Tea Board's earlier OM No.12(23)/LC/ 2003/XII/3317 dated 19.01.2004 has been amended by the Registering Authority only in respect of Nilgiri tea growing areas for fixation of minimum price of tea leaf as mentioned below.

1) Every registered manufacturers of tea, engaged in purchasing tea leaf from small tea growers (tea leaf suppliers), shall share their total sale proceeds from the sale of made tea with the tea leaf suppliers supplying tea leaf at a rate not less than the rate given below:

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| Region/States | Percentage share of tea leaf growers/supplier (%) |
|---------------|---------------------------------------------------|
| Nilgiri       | 65.00                                             |

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2.The minimum price for tea leaf per kg payable to the tea leaf supplier by every tea manufacturers engaged in purchasing tea leaf from tea leaf suppliers shall be based on made tea out turn percentage as specified below:-

Region/States	Out turn Percentage (%)
Nilgiri	25.00

The above sharing percentage and out turn percentage in respect of Nilgiri tea growing areas will be effective from 1st January 2008. In respect of other tea growing areas, the percentage share and out turn percentage for small tea growers/tea leaf suppliers as mentioned in Tea Board's earlier OM dated 19th January 2004 shall continue for the time being.

Further, in exercise of powers vested under Para 13(3) of the Tea (Marketing) Control Order 2003, Registering Authority hereby issues directive to the made tea manufacturers and small tea growers/tea suppliers to follow the guidelines issued earlier vide Tea Board's OM No.12(23)/LC/2003/XII/4123 dated 26.03.2004 and OM NO.12(23)/LC/2004/VIII/50 dt 5/6.4.2004."

11. The petitioners not satisfied with the decision taken by the Tea Board have come forward to file the present two writ petitions. It is stated by them that the order dated 02.01.2008 passed by the first respondent is nothing but an eye wash and the order will not bring any solution to the problem faced by the small tea growers and it will not bring any improvement to the price of green tea leaf. The average sale price obtained by the INDCO Tea Factories and the bought leaf tea factories during the period September and October 2007 was Rs.35/-per Kilogram of made tea. As per the existing formula of 60:40, the rate paid to the growers will be Rs.5.25 per Kilogram of Green leaf. Because of the order passed by the first respondent, the projected price increase will be only around 50 to 60 paise even if the made tea is sold at Rs.35/- per kg and the small tea growers will not get the rate to match atleast their production cost. The action of the first respondent was illegal. The small tea growers are entitled to a reasonable return. The Central Government has to fix minimum support price like they extend for other crops viz., sugarcane and rubber. Their contention that it was not

mandatory to invoke provisions of Section 30 of Tea Act was rejected by the Division Bench. The report of ICWAI Committee dated 12.10.2007 is only provisional and the ICWAI Committee was required to submit the final report after completion of their study in other tea growing areas in India including Kerala, Assam, West Bengal, Tripura etc. The Committee ought to have re-visited the Nilgiris Tea growing area to gather more information. Even though an application was filed to extend the time to implement the order, without reference to the request for extension of time, hurriedly, the order dated 02.01.2008 came to be passed. Even during this period, the third respondent, Tea Board along with the District Collector had conducted extensive discussion with the growers during the first week of January 2008 and the outcome of the discussion is not reflected in the impugned order. The action of the first respondent dated 02.01.2008 that the price sharing formula between tea growers and the manufacturers is not a solution to the problem faced by the tea growers.

12. In the counter affidavit filed by the third respondent, it was stated that the present writ petitions are not maintainable and the petitioners have no locus standi to file a writ petition when a writ petition in a representative capacity filed in W.P.No.39192 of 2002 was already disposed of and that order is binding on the petitioners. The Tea Board has obtained the services of the ICWAI and arrived at the ratio of costs of the tea grower and passed the order dated 01.01.2008. It was further stated that the price of tea in the year 1998-99 cannot be a benchmark because due to the international developments such as drought in Kenya, there was increased demand for Indian tea in the Russian Federation. So there was variation of tea prices starting from the year 1993 to 2007. At no point of time, the average price of tea was Rs.15/- per kg as alleged by the petitioners. The manufacturing units, particularly, bought leaf and cooperative tea factories are purchasing/procuring green tea leaf from the small tea growers. Such purchased/procured green tea leaves are used as raw material for manufacturing tea by these manufacturing units. The additional cost is incurred by such manufacturing units in processing or manufacturing made tea from the green tea leaf. The ultimate output i.e. made tea is being sold in the market by these manufacturing units. If a minimum price for green tea is fixed without taking into account the then prevailing market forces and if the cost of production of made tea including the price of green tea leaf used as input, is higher than the prevailing market price, then the buyer of tea leaf i.e., made tea manufacturing unit may not be able to purchase the green tea leaf at a price already fixed. In the absence of buyer to buy tea leaf at a minimum support price, small tea growers will not be in a position to sell their tea leaf and may be adversely affected.

13. In order to take care of such a situation, Tea (Marketing) Control Order, 2003 was notified on 01.01.2003 in exercise of the powers conferred under Section 30 of the Tea Act, 1953 incorporating

a provision to evolve a "price sharing formula" for ensuring proportionate price of green tea leaf payable to tea leaf suppliers by the made tea manufacturers. ICWAI was engaged during 2003 to study the three different issues namely, i) cost of production of green tea leaf of small growers ii) cost of production of 'made tea' by tea manufacturing units and iii) conversion ratio of tea leaf into made tea for different tea growing areas of Nilgiris. Based on the study report, Tea Board evolved the price sharing formula and according to the said price sharing formula, at least 60% of the sale proceeds of made tea are required to be paid to the supplier of green tea leaf as price of the green tea leaf. 40% of the sale proceeds will be allowed to be retained by the manufacturers to meet the manufacturing cost. Such system of sharing of sale proceeds has been encouraging both to the manufacturers and the green tea leaf suppliers to improve the quality of made tea as well as the quality of raw materials i.e., green tea leaf to maximise the price of final product i.e, made tea.

14. The Tea Board, after getting approval from the Government of India evolved a price sharing formula on 19.01.2004, which has been made effective since 01.04.2004. Again during 2007, Tea Board engaged ICWAI to undertake a similar study in respect of all tea growing areas because of the changes in the cost of production and usage of raw material namely green tea leaf for manufacture of made tea. ICWAI submitted a report in respect of Nilgiris tea growing areas during October 2007 and continued to study the other tea growing areas for submission of the report. Based on the report of ICWAI, the third respondent after obtaining the approval of Government of India revised the price sharing formula wherein 65% of the sale proceeds of made tea are required to be paid to suppliers of green tea as price of green tea leaf. The ratio of conversion of green tea leaf into made tea has been fixed at 25% instead of 23% fixed earlier. It was contended that the order dated 02.01.2008 does not suffer from any infirmities and prayed for dismissal of both writ petitions.

15. Since the petitioners invoke the provisions of Section 30 of the Tea Act, 1953 to be exercised by the first respondent, it is necessary to refer to the entire Section 30, which is as follows:-
"30. Power to control price and distribution of tea or tea waste.- (1) The Central Government may, by order notified in the Official Gazette, fix in respect of tea of any description specified therein-

a)the maximum price or the minimum price or the maximum and minimum prices which may be charged by a grower of tea, manufacturer or dealer, wholesale or retail, whether for the Indian market or for export;

b)the maximum quantity which may in one transaction be sold to any person.

2)Any such order may for reasons to be specified therein-

a) fix prices for such tea differently in different localities or for different classes of dealers, or for growers of tea or manufacturers;

b) instead of specifying the price or prices to be charged, direct that price or prices shall be computed in such manner and by reference to such matters as may be provided by the order.

3) The Central Government may, by general or special order-

a) prohibit the disposal of tea or tea waste except in such circumstances and under such conditions as may be specified in the order;

b) direct any person growing, manufacturing or holding in stock tea or tea waste to sell the whole or a part of such tea or tea waste so grown or manufactured during any specified period, or to sell the whole or a part of the tea or tea waste so held in stock, to such person or class of persons and in such circumstances as may be specified in the order;

c) regulate by licenses, permits or otherwise the production, storage, transport or distribution of tea or tea waste.

4) Where in pursuance of any order made with reference to clause (b) of sub-section (3), any person sells the whole or a part of any quantity of tea or tea waste, there shall be paid to him as price therefor-

a) where the price can be fixed by agreement consistently with the order, if any, relating to the fixation of price issued under sub-section (1), the price so agreed upon;

b) where no such agreement can be reached, the price calculated with reference to any order as is referred to in clause (a);

c) where neither clause (a) nor clause (b) applies, the price calculated at the market rate prevailing in the locality at the date of sale.

5) Without prejudice to the generality of the power conferred by sub-sections (1) and (3), any order made thereunder may provide-

a) for requiring persons engaged in the production, supply or distribution of, or trade and commerce in, tea or tea waste to maintain and produce for inspection such books, accounts and records relating to their business and to furnish such information relating thereto as may be specified in the order;

b) for such other matters, including in particular the entering and search of premises, vehicles, vessels and aircraft, the seizure by a person authorized to make such search, of tea or tea waste in respect of which such person has reason to believe that a contravention of the order has been, is being or is about to be committed, the grant or issue of licenses, permits or other documents and the charging of fees therefor."

16. The Act was intended to provide control by the Union of India over the Tea Industry, including the control pursuant to the international agreement now in force of the cultivation of tea and of the export of tea from India and further purpose to establish a Tea Board as well as to levy duty of excise on tea produced in India. The Act had underwent several amendments over the period. Pursuant to the said Act, the third respondent Tea Board was set up to look after the development of tea industry in India. In exercise of power under Section 30(3) and Section 30(5) of the Tea Act, 1953, the Government of India had framed Tea (Marketing) Control Order 2003. The Control Order requires the registration of manufacturers and producers of tea as well as registration of buyer of tea. Control Order 30 provides for Fixation of price sharing formula and its compliance by the registered buyers and manufacturers.

17. It is also brought to the notice of this Court that during the pendency of the writ petition, the State Government announced supportive price to the members of INDCO Tea Factories in the Nilgiris District from July 2012 to December 2012 and have sanctioned Rs.6 Crores vide G.O.(D) No.110 Micro, Small and Medium Enterprises Department, dated 27.07.2012. This was given as a grant towards supportive price for the green leaf for the small tea growing members of the INDCO Tea Factories with an additional supportive price of Rs.2/- per kg of green leaf was given to the members.

18. However, Mr.R.Sivakumar, learned counsel for the petitioners contended that there are about 17 INDCO Tea Factories. Out of 65 thousand small tea growers only about 21 thousand are the members of these INDCO Tea Factories and they depend upon bought leaf tea factories, numbering about 150. The production of bought tea out of these small tea gardens will account for 70% of the total tea produced in the State of Tamil Nadu. Till 1998, the small tea growers were getting a reasonable price of Rs.10/- to Rs.18/- per kg and the average sale price of green tea leaf was Rs.15/-. During the year 1998-99, the cost of production of one kg of green tea leaf was estimated to be Rs.10.25/-. By the year 1999, the price of the green tea leaf has fallen drastically to Rs.4.50 per kg. On some occasions, it has further gone down to Rs.3/- per kg. But the branded tea are being sold at the rate of Rs.150 to 200 per kg in the retail market. It was stated that 4 kgs of green tea leaf gives to 1 kg of black tea. There is no stagnation of the made tea in the market and the demand for the made tea in the market is always steady and increasing. In the tea industry, Growers, Manufacturers, Brokers and Buyers are the four major players. Among these four players, growers are the unorganised sector and are the most exploited. Manufacturers/tea factories are not likely to suffer more because they

are assured of their production cost along with marginal profit for their share. Therefore, the brokers and the buyers, who are the manipulators are responsible for the crisis. The Central Government has failed to take note of the actual situation. They have also failed to take note of the direction issued by this Court in W.P.No.39192 of 2002.

19. The Tea Board, the third respondent, when they sought for time, supported by an affidavit sworn to by the Executive Director of Tea Board, Coonoor dated 14.08.2008, in paragraph 2 had stated as follows:-

"2. ..The problem of small growers have to be studied in depth which will include a market study taking into account the view of small growers as well as that of tea manufacturers. Besides, the economics and costings involved in the harvesting of tea leaves as well as the manufacture of tea is to be studied by the Institute of Cost and Works Accountants of India (ICWAI), who are to be engaged and entrusted with the work, which will take substantial time."

20. Again they filed another time extension application dated 13.11.2007 together with supporting affidavit. In paragraphs 6 and 7, it was stated as follows:-

6. It is respectfully submitted that the ICWAI submitted the study report in respect of Nilgiri on 12.10.2007. The report received from ICWAI relates to only Nilgiri area and that too in respect of small growers and bought leaf factories and is provisional in nature. ICWAI was required to submit the final report after completion of the study in other tea growing areas in India including Kerala, Assam, West Bengal, Tripura etc. There is also a need for revisiting the Nilgiri tea growing areas for conducting the study in respect of big tea estates, estate factories and co-operative factories separately in addition to the study already made in respect of small tea growers and bought leaf factories. It is extremely important for the study to cover all the tea growing areas in India as there are large number of small growers in other States including Kerala, Assam and West Bengal and any formula that is developed to fix the minimum price for tea leaf would have to take into account the production cost for the small growers and the bought leaf factories in these areas also. The tentative time schedule for visit of tea growing areas as indicated by ICWAI is as under :-

Area

Duration

Nilgiri and Kerala	November,2007
Assam and West Bengal	
Uttaranchal	December, 2007
Himachal Pradesh	January, 2008

7. It is submitted that the examination of the study report for developing a formula in fixing the minimum price of tea leaf by the respondent will take some more time."

21. It is at this stage on the basis of the preliminary report of the ICWAI, they had taken a decision as revealed in the order dated 02.01.2008.

22. The learned counsel for the third respondent fairly stated that ICWAI submitted a report on 05.05.2008 with reference to the cost of production of green leaf by small growers and Cost of Manufacturing of Made Tea by Bought Leaf Factories, Co-operative Factories, State Government Factories and Tea Estates in Nilgiris. Therefore, the benefit of the said report is not available to the Tea Board when they announced the present formula. Further, as per the request of time for conducting a study in all other centres, no final report has also been produced. Though under the relevant Control Order, different prices can be fixed for different centres, but fixing the price also depends upon the international price offered to the manufactured tea. Therefore, the Union of India must take a realistic view of the problem involved.

23. As rightly contended by the learned counsel for the petitioners, it is the brokers and buyers who control the market at the instance of small tea growers and when only fraction of the growers were depend upon supply of INDCO Tea Factories for which even the State Government had extended the marginal benefit, large number of small tea growers are left high and dry. As rightly contended, respondents 1 and 3 have not really taken note of the direction issued by the Division Bench earlier and have hurriedly announced a formula which is far from any ground reality.

24. Under the said circumstances, the first respondent Union of India is directed to exercise its power under Section 30 of the Tea Act, 1953 by calling for a realistic report on the problem faced by the small tea growers in Nilgiris District and thereafter, arrive at a scientific sharing formula between the growers and the manufacturers. Since the monopoly power is vested on the Government of India, in this regard, it requires a scientific human approach and should not be dictated by the artificial market forces. The endeavour of Government of India must be to provide a realistic price in respect of the green leaf produced by the small tea growers and must be based upon the ground reality regarding the cost of production of such green leaf. The Union of India will also take note of the ICWAI Committee report dated 05.05.2008 and may even call for any other study in this regard and arrive at a just and reasonable conclusion and price to be paid for the green leaf produced by small growers. This exercise shall be undertaken by the Union of India within a period of six months from the date of receipt of a copy of this order.

25. Both writ petitions are allowed. No costs. Connected miscellaneous petitions are closed.

To

1.The Secretary to Government,
The Union of India,
Ministry of Commerce,
Central Secretariat,New Delhi.

2.The Chief Secretary to Government,
The State of Tamil Nadu,
Fort St. George, Chennai-600 009.

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