

Sale of "Levy Sugar" in Black Market by the Jayapore Sugar Co., Rayagada, Orissa

*302. SHRI L. R. NAIK:†
SHRI JAGJIT SINGH
ANAND:
SHRI SHYAM LAL YADAV:
SHRI BHAGWAN DIN:
SHRI SHRIKANT VERMA:

Will the Minister of FINANCE be pleased to state:

(a) whether it is a fact that the Central Board of Excise and Customs imposed a penalty of only Rs. 6 lakhs on the Jayapore Sugar Co., Rayagada in Orissa for the sale of about 14000 bags of levy sugar in black market whereas the maximum penalty which can be levied is three times the value of excisable goods apart from the confiscation of the said excisable goods under rule 173Q of the Central Excise Rules, 1944;

(b) if so, what are the reasons for which maximum penalty permissible under the rules has not been imposed in this case; and

(c) what are the reasons for which Government did not file an appeal against the Board's order which has not exercised its discretion for imposing the Maximum penalty?

THE MINISTER OF STATE IN THE MINISTRY OF FINANCE (SHRI SATISH AGARWAL): (a) It is a fact that the Central Board of Excise and Customs imposed a penalty of Rs. 6 lakhs on M/s. Jayapore Sugar Company for evasion of excise duty of Rs. 2,68,605 by diverting 13,940 quintals of sugar, which was specifically allotted for sale at fair price to consumers or for other public purposes. For contravention of Central Excise Law of the nature specified in rule 173Q of the Central Excise Rules, 1944, a person is liable to a penalty not exceeding three times the

value of the offending excisable goods or five thousand rupees whichever is greater.

(b) The Central Board of Excise and Customs examined the circumstances of the case in detail and came to the conclusion that for the offence under the Central Excise & Salt Act, 1944, a penalty of Rs. 6 lakhs would be appropriate taking into account the fact that the amount of duty evaded was about Rs. 2.7 lakhs.

(c) There is no provision in Central Excise Law for an appeal being filed against an order of Central Board of Excise and Customs passed in pursuance of section 35A of the Central Excises and Salt Act, 1944. Sub-section (2) of section 36, *ibid*, however, empowers the Central Government, on its own motion or otherwise, to call for and examine the record of an order of the above type for the purpose of satisfying itself as to the correctness, legality or propriety thereof. The Government after considering all the facts of the case, has decided that there is nothing to justify interference with the Board's order under the said sub-section.

SHRI L. R. NAIK: Sir, in the Excise Rule No. 173Q, the penalty to be levied has been prescribed in respect of removal of excisable goods in contravention of the law. Rule No. 173 speaks very clearly of two kinds of penalties; one is the confiscation of the goods that have been unauthorisedly removed; the second is the penalty which could be three times the value of the goods or Rs. 5,000 whichever is greater. In that case, Sir, the Hon. Minister has stated that the goods that have been removed unauthorisedly are nearly 14,000 quintals, and the value of the goods is the main criterion to be taken into consideration. In my opinion, by calculating the details which may be furnished later, the value of the goods comes to 28 to 30 lakhs of rupees. So, the penalty should have been ordinarily about Rs. 90 lakhs plus the confiscation of the goods, the value of

†The question was actually asked on the floor of the House by Shri L. R. Naik.

which would have been another Rs. 30 lakhs. That means that one crore and twenty lakhs of rupees could have been the penalty. But in the face of these facts the Board has levied a penalty after a period of six years. This is to be noted very clearly, Sir, because these goods were removed in 1972, but after a period of nearly six years, that is, on the 6th of January, 1978 it passed an order levying a penalty of Rs. 6 lakhs only. So, may I know from the Hon. Minister whether the Board, while passing this order, has expressly stated in the body of its order any extenuating circumstances?

SHRI SATISH AGARWAL: The Hon. Member has referred to rule 173Q of the Excise Rules and has said that there is a mandatory provision for confiscation of the goods. Sir, you might be aware that this particular offence took place between January 1972 and June, 1972. The adjudication proceedings before the Collector were dropped on 23-10-1974. The Collector dropped the proceedings. Where is the question of confiscation of the property? Then the Board, on its own motion under the law, reviewed the proceedings some time in 1975 during the emergency period but nothing was done for two years. Now on the 6th of January, 1978, the Board has passed its considered judgement running into 45 pages and imposed a penalty of Rs. 6 lakhs. It is true that a penalty to the tune of three times the value of the goods can be levied. But, as you know, under section 2 of the IPC one can be hanged, but it is not in every case that one is hanged. All the other circumstances shall have to be taken into consideration. The amount of duty was Rs. 2.7 lakhs and so a penalty of Rs. 6 lakhs has been imposed. That is sufficient, I think.

SHRI L. R. NAIK: Sir, my question was....

MR. CHAIRMAN: Do not enter into a discussion. You put the second supplementary.

SHRI L. R. NAIK: The second supplementary, I am putting. He has not answered my first supplementary: while passing the order has the Board mentioned in the body of the order the extenuating circumstances which compelled it to reduce the penalty? That question he has not answered.

The second supplementary is this. The hon. Minister has said that the penalty could be levied to the extent of three times the value of the goods, but he has shown some reasons for not doing that. May I know from the hon. Minister whether his Ministry is now fully posted with the facts on what all led to the mishandling of this case, as a result of which large quantities of sugar have come to be sold in the black-market to the detriment of the people? And, if so, are they going to review the case? Under section 36(2) of the Salt Act, they have powers to take up the case *suo motu* and review the whole thing. So, may I know from the hon. Minister whether he is prepared even now to issue a show-cause notice to the guilty persons and punish them?

SHRI SATISH AGARWAL: Sir, so far as the reasons given by the Board in its order are concerned, the judgement runs into 45 pages. If the hon. Member is very much interested in it, I will furnish a copy of the order to him. That is number one. Number two, so far as the question of review of this case is concerned, he referred to the six-year period. But I said that the notice was issued sometime in 1975 and the case was decided on the 6th January, 1978. The Government is not in any mood to review the order, and the Government is completely satisfied that looking to the circumstances of the case, a personal penalty of Rs. 6 lakhs in a case of evasion of Rs. 2.7 lakhs is sufficient. We have furnished copies of this order to the CBI and the Board of Direct Taxes. They are looking into the matter. And the Income-tax Department has reopened all income-tax assessments of this particular party for the year 1973-74. And for his in-

formation, through you, Sir, I may also mention that the Directorate of Sugar has also taken up the question, and the CBI is investigating the whole affair to see whether prosecution can be launched or not in these cases.

SHRI L. R. NAIK: The Government has powers...

MR. CHAIRMAN: No, no, you cannot go on. Mr. Shrikant Verma.

SHRI L. R. NAIK: ... to review the case up to the 1st July, 1978.

MR. CHAIRMAN: No. Mr. Shrikant Verma.

श्री श्रीकान्त वर्मा : सभापति महोदय, मैं अपने सहयोगी की इस बात से पूरी तरह से सहमत हूँ कि धारा 173(क्यू) के अन्तर्गत 30 लाख रुपये के दण्ड की व्यवस्था की जानी चाहिए थी, लेकिन यह नहीं किया गया। इसके साथ साथ एक्साइज बोर्ड के पुनर्गठन की आवश्यकता है। इसके अलावा जयपुर चीनी उद्योग की पूरी तरह से जांच की भी आवश्यकता है। इन दोनों बातों की तरफ मंत्री महोदय को ध्यान देना चाहिए। लोक सभा में उनकी पार्टी के लोगों ने उनको इस सम्बन्ध में पत्र लिखा है और उसमें उन्होंने स्वयं मंदेह व्यक्त किया है कि इस मामले में जैसा होना चाहिए था वैसा नहीं हुआ है। ऐसी स्थिति में मैं जानना चाहूँ कि जो यह शून्य लोबी इस सरकार के अन्दर और बाहर काम कर रही है, केवल उसी के हितों को ध्यान में रखा जाएगा या समूचे देश की चीनी की आवश्यकताओं को ध्यान में रखते हुए कोई नीति निर्धारित की जाएगी? इसके अलावा मैं यह भी जानना चाहता हूँ कि चीनी मिलों के राष्ट्रीयकरण के बारे में क्या सरकार ने कोई फैसला कर लिया है? यदि नहीं, तो सरकार की चीनी मिलों के राष्ट्रीयकरण के विषय में क्या नीति है?

श्री सतीश अग्रवाल : जहाँ तक चीनी मिलों के राष्ट्रीयकरण का प्रश्न है, इस संबंध

में मैं कुछ नहीं कह सकता हूँ। साथ ही यह प्रश्न मूल प्रश्न से उत्पन्न नहीं होता है। लेकिन जहाँ तक सेंट्रल एक्साइज बोर्ड के पुनर्गठन का संबंध है, उसके बारे में दो सदस्य बढ़ाने का विधेयक लोक सभा के विचाराधीन है। वह विधेयक इस सदन के सामने भी आएगा। उस समय जो भी माननीय सदस्यों के सुझाव होंगे उनको ध्यान में रखा जाएगा।

श्री श्रीकान्त वर्मा : जयपुर चीनी उद्योग के बारे में आपने कुछ भी नहीं बताया है। क्या आप उसकी पूरी तरह से जांच करेंगे?

श्री सतीश अग्रवाल : जयपुर चीनी उद्योग की सी० बी० आई० द्वारा जांच हो रही है। इसलिए किसी अलग एजेंसी द्वारा उसकी जांच करवाने से कोई लाभ नहीं होगा।

श्री श्रीकान्त वर्मा : आप उनके सारे कागजात जब्त क्यों नहीं कर लेते हैं?

MR. CHAIRMAN: Mr. Naidu

SHRI N. P. CHENGALRAYA NAIDU: Sir, in Bihar, for example, the price of levy sugar or the controlled price is about Rs. 262 per quintal. Now, in the open market the price is about Rs. 230 per quintal. Now, if I

sell sugar at Rs. 230 in the open market, will it come under the provision of blackmarketing? I want to know the opinion of the hon. Minister. Also in view of the fact that the price of sugar in the open market is less than the controlled price, will the hon. Minister de-control sugar sale?

SHRI SATISH AGARWAL: Sir, if duty has been paid on the sugar as levy sugar and later on it is diverted to the black-market and sold as free-sale sugar, then the Essential Commodities Act is there to take care of the situation.

DR. BHAI MAHAVIR: Sir, the hon. Minister has stated that for six years

no action was taken, no decision was taken on a case in which our hon. friends that side are showing so much interest today. I would like to know if the enquiry that is being conducted will also look into the aspect as to whether there was any pressure for this case not being decided throughout the period of Emergency and if there was any pressure, whether it was a political pressure who brought in that pressure and whether it was the ruling party of the time which was interested in not allowing any penalty to be imposed on this particular party because of ulterior motives. If so, why such an inquiry is not being conducted? I would like to know why this aspect is not being inquired into.

SHRI SATISH AGARWAL: Sir, it is a fact that the matter related to the year 1972. It is also a fact that the proceedings were dropped in 1974 and after dropping the proceedings in 1974, the Collector concerned retired three months later. So far as we are concerned, we are also inquiring into the matter to decide as to what action should be taken and whether proceedings should be initiated (*Interruptions*) So far as the political aspect of the matter is concerned, the Department is not investigating the matter. The C.B.I. is investigating the matter.

(*Interruptions*)

MR. CHAIRMAN: The hon. Minister need not go on replying to these things.

SHRI SATISH AGARWAL: Regarding this political aspect, it will be inquired into whether there was any pressure for not taking any action.

SHRIMATI HAMIDA HABIBUL-LAH: Sir the discussion is not about 1974 and 1972. The discussion is about the Board's decision because it passed an order on the 6th of January 1978, levying a penalty of six lakhs of rupees whereas the penalty should have been Rs. 1.12 crore. Since the Government has got power under section 36(2) of the Central Excise and Salt Act, 1944, to examine *suo*

motu whether the penalty levied is proper and adequate and according to rules this should be done within six months and this period expires on the 5th of July, 1978, my question is whether the Minister will arrange to order for a show-cause notice immediately and bring the culprits to book.

SHRI SATISH AGARWAL: These are quasi-judicial proceedings. You will appreciate that the power of revision against this order of the Board lies with the Special Secretary. Will it be fair to comment anything because the scope for revision is still available? So far as the question of penalty is concerned, the Government has considered the judgment and the authorities concerned have come to the conclusion that there is no case for review.

श्री नगेश्वर प्रसाद शाही : श्रीमन्, यह सही है कि मामला बहुत पुराना है। लेकिन यह बोर्ड 1975 से लेकर अब तक इस मामले को दबा कर बैठा है और श्रीमन्, यह सभी जानते हैं कि यह शूगर मैग्नेट जो है, पोलिटिकल लीडर्स और राजनैतिक नेताओं के पाकेट भरता आ रहा है जिससे शूगर इंडस्ट्री और गन्ना पैदा करने वाले किसानों की दुर्गति हो रही है और नेता अपने पाकेट भर रहे हैं। नारंग साहब को यह सभी जानते हैं। कुलदीप नारंग जो है, वह दिल्ली में बैठकर सुगर मैग्नेट्स की वकालत करता है और जो लोग पावर में रहते हैं उनके नजदीक बैठ कर गोल माल करता है। इसलिये मैं मंत्री महोदय से जानना चाहता हूँ

(*Interruptions*)

कुलदीप नायर कहाँ बैठता है ? वह 12 विलिंगडन क्रिसेट में बैठता है और इसलिए श्रीमन् ...

(*Interruptions*)

मैं मंत्री महोदय से जानना चाहता हूँ कि इस बोर्ड ने तीन साल तक क्यों नहीं फैसला

किया ? 1975 में यह मामला बोर्ड के सामने आया इन्होंने तीन साल तक इसमें क्यों कार्यवाही नहीं की गयी ?

दूसरी बात यह है कि इन पूजीपतियों के साथ क्यों रियायत बरती गयी । आपके हिसाब से भी 2.7 लाख का तीन गुना आता है जो कि 8.1 लाख हुआ और आपने केवल 6 लाख जुर्माना किया । यह क्यों ? आपकी यह दलील ठीक नहीं कि 302 में मौत की सजा दी जाती है परन्तु कभी कभी उसमें रियायत भी दी जाती है । इन पूजीपतियों को इससे भी ज्यादा सजा मिलनी चाहिए । मैं मंत्री महोदय से इन प्रश्नों का उत्तर चाहता हूँ ।

श्री सतीश अग्रवाल : सभापति महोदय कितना जुर्माना किया जाए या न किया जाए यह बोर्ड के सम्मानित सदस्य जिनको फैसला करना है उन्हें देखना है। क्या सदन यह चाहेगा कि बोर्ड की ज्यूडिशियल फंक्शंस में गवर्नमेंट इंटरफेयर करे कि इतना जुर्माना करो, इतना न करो

(Interruptions). The policy of the present Government is not to interfere in the judicial administration...

SHRI VISWANATHA MENON: Why not you go in appeal?

MR. CHAIRMAN: The hon. Minister will kindly resume his seat. You have said it.

SHRI YOGENDRA MAKWANA: The Minister is misleading the House by saying that it is a judicial proceeding. It is a quasi judicial proceeding and adjudication is done by the departmental officials only. It is done by the departmental officials with the connivance of politicians. This case was pending for three years, as he said, and it takes time for investigation and there is no question of delay. We in the House are concerned about the penalty imposed by the departmental officials. Has it been imposed in tune

with the offence committed by the party? The Minister has given an example of section 302 IPC That is quite different. In case a man is proved to have committed an offence under section 302, the penalty is definitely imposed. In the instant case it has been conclusively proved that the offender has committed an offence under rule 173Q and has removed sugar and sold it in the market. Now, what are the circumstances under which the penalty is not appropriately imposed on the offender? I would like to have an answer to this question.

SHRI SATISH AGARWAL: The allegation of the hon. Member is that this particular company removed the goods and sold them in the black market. It is an offence under the Essential Commodities Act and not under the excise law...

SHRI YOGENDRA MAKWANA: If he removed sugar without payment of duty, that is an offence.

SHRI SATISH AGARWAL: It is not without payment of duty. The payment of duty was there. It was on the basis of levy sugar and not free sale sugar. Later on he diverted this sugar and sold it and the difference in duty on that was Rs. 2.7 lakhs. On that basis, the Board, which is a quasi-judicial authority, imposed a penalty of Rs. 6 lakhs and the Government does not want to interfere in that order.

SHRI B. N. BANERJEE: From the one side there is a suggestion or allegation that the previous Government did not pursue the case due to some political reasons. Simultaneously we also hear an allegation or suggestion that the present Government dealt with the case leniently again for political reasons. A third view has been put forward that irrespective of the nature and character of the party composing the Government, the sugar magnates always put the money into the pockets of persons running the

Government. I will be interested in knowing which is this business house or who is the person controlling this particular company and the names of its directors and thirdly whether any personal penalty was imposed on anybody.

SHRI H. M. PATEL: May I clarify the position? It is suggested that leniency has been shown to the company. No leniency has been shown to anyone. The Board is acting in a quasi-judicial manner and it has come to this conclusion and has imposed this penalty. So far as the other offences are concerned, they have been remitted to the CBI for investigation. Whatever prosecution will be called for will take place. There is no question of any leniency. There must not be any mix-up of two things. Thirdly, the suggestion that merely because there is a provision that the maximum penalty should be three times the value of the goods and because it has not been imposed, some leniency has been shown may be a matter of opinion. Because it is a quasi-judicial decision, the Government does not consider it appropriate to interfere with it. There is no question of any interference.

SHRI B. N. BANERJEE: Sir, he has not answered any of my questions. I asked who the persons are who control this business house and I wanted to know the names of the directors of this company. I also wanted to know whether any personal penalty was imposed. I asked where this firm of factory is.

SHRI H. M. PATEL: Personal penalty has been imposed. It is a firm of Andhra Pradesh. It is in Orissa. It is M/s. Jayapore Sugar Company. Originally, it was an Andhra Pradesh Company; but it is in Orissa now.

SHRI LAKSHMANA MAHAPATRO: Sir, this should be an eye-opener for all of us.

MR. CHAIRMAN: That is all right. You put your supplementary.

SHRI LAKSHMANA MAHAPATRO: Sir, my question relates to the diversion of the levy sugar which the common man gets through the fair price shops. The pleading from the side of this Company is that this sugar has not gone into the blackmarket and that the prices have gone up and all that. But my point is this: If you are not streamlining the public distribution system otherwise, at least this levy sugar, the little percentage of levy sugar that you have allowed, that you have fixed for the common man, should not be allowed to be diverted. Now how do you ensure that this sugar goes only to the public distribution system and diversion does not take place in the factories? I want to know this.

SHRI SATISH AGARWAL: Sir, this happened in 1972 and it does not relate to the present period.

SHRI MANUBHAI MOTILAL PATEL: Sir may I know from the honourable Minister whether, in view of the anxiety shown by the honourable Member, Shri L. R. Naik ...

(Interruptions)

SHRI K. K. MADHAVAN: Sir, I do not understand this at all. New Members are given the chance to put questions and I have not been given any chance at all. I am not given any chance at all.

(Interruptions)

SHRI MANUBHAI MOTILAL PATEL: Sir, Mr. L. R. Naik very specifically asked whether in view of the fact that it pertained to the period 1972 to 1976, the inquiry will cover not only the action of the Excise Board of the officers concerned, but also the Minister in charge of this during that period.

SHRI SATISH AGARWAL: Sir, the political aspect of the matter is being inquired into. Whosoever is concerned with it, his conduct will also be inquired into.

MR. CHAIRMAN: Yes, Mr. Madhavan. You put your question now.

SHRI K. K. MADHAVAN: Thank you very much for allowing me for the first time to put a supplementary after more than two years or so. Sir, my point is this: The honourable Minister of Finance has himself stated in so many words that the body is only a quasi-judicial body and not a fully judicial body. My understanding of the legal implication of the term "quasi-judicial body" is that half of it is judicial and the other half is executive and it is the executive side that should control.

MR. CHAIRMAN: Kindly resume your seat.

SHRI SATISH AGARWAL: Sir, the interpretation given by my honourable friend of the word "quasi-judicial" is by and large, correct.

MR. CHAIRMAN: That is correct.

SHRI N. K. P. SALVE: Sir, the honourable Finance Minister's statement is an oversimplification of the matter. He may be having a grievance that a penalty of six lakhs has been imposed by this quasi-judicial body. But our grievance is that this Government is trying to be unduly sweet in respect of the sugar matter of M/s. Jayapore Sugar Company. What have you got to ensure that the maximum penalty was levied? What else has the Government been doing so far? Will you explain to the House the extenuating and the mitigating circumstances under which the maximum penalty of two crores or three crores was not levied and a fine of only six lakhs was imposed? Does this Government carry on its head the responsibility to ensure that the maximum penalty is levied by the Board concerned?

MR. CHAIRMAN: That is all right.

SHRI H. M. PATEL: Sir, the honourable State Minister, Mr. Satish Agarwal, has already explained that there is a 45-page judgment which sets out all the reasons that led the Board to impose a penalty of six lakhs and also

the reasons for their considering that this penalty was the appropriate penalty. If my friend over there wants to study it, we can provide him a copy of that.

SHRI G. LAKSHMANAN: What is the difficulty in going in for appeal? There is something wrong ...

(Interruptions)

MR. CHAIRMAN: Next question.

राज्य व्यापार निगम के व्यापार में गिरावट

* 303. श्री देवराव पाटील : †

श्री श्यामलाल यादव :

श्री रामानन्द यादव :

श्री श्रीकान्त वर्मा :

क्या वाणिज्य, नागरिक पुति और सहकारिता मंत्री यह बताने की कृपा करेंगे कि :

(क) क्या यह सच है कि राज्य व्यापार निगम का व्यापार बराबर गिरता जा रहा है ;

(ख) यदि हाँ, तो 1975-76, 1976-77 और 1977-78 के दौरान निगम ने कितने का व्यापार किया ; और

(ग) क्या निगम को आयात निर्यात व्यापार के कुछ क्षेत्रों में एकाधिकार प्राप्त है ?

‡Decline in trade of S.T.C.

*330. **SHRI DEORAO PATIL:** †

SHRI SHYAM LAL YADAV:

SHRI RAMANAND YADAV:

SHRI SHRIKANT VERMA:

Will the Minister of COMMERCE, CIVIL SUPPLIES AND COOPERATION be pleased to state:

(a) whether it is a fact that trade by the State Trading Corporation has been continuously declining;

†The question was actually asked on the floor of the House by Shri Deorao Patil.

‡[] English translation.