

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

Present :- Hon'ble Justice Amrita Sinha

WPA No. 1126 of 2022

Indian Jute Mills Association and Anr.

Vs.

Union of India and Ors.

For the writ petitioners	:-	Mr. Abhrajit Mitra, Sr. Adv. Ms. Rajshree Kaharia, Adv. Mr. Sarvopriyo Mukherjee, Adv. Mr. Satadeep Bhattacharyya, Adv. Mr. Uttam Sharma, Adv.
For Union of India	:-	Mr. Dhiraj Trivedi, Asst. S.G. Mr. Dibashis Basu, Adv. Mr. Arun Bandyopadhyay, Adv.
For Jute Commissioner	:-	Mr. Jayanta Kumar Mitra, Sr. Adv. Mr. Joydip Banerjee, Adv. Mr. Rahul Karmakar, Adv.
For Respondent No. 3	:-	Mr. Saikat Basu, Adv. Mr. Abhishek Acharya, Adv.
For the State	:-	Mr. Susovan Sengupta, Adv. Mr. Manas Kumar Sadhu, Adv.
For Respondent No. 5	:-	Mr. Soumya Mazumdar, Adv. Mr. Kumar Gupta, Adv. Mr. Pranav Sharma, Adv.
Hearing concluded on	:-	25.04.2022
Judgment on	:-	11.05.2022

Amrita Sinha, J.:-

The petitioner no. 1, the Indian Jute Mills Association, is a Company incorporated under the provisions of the Companies Act, 1956 represented by the petitioner no 2, being its Secretary. The petitioner no. 1 has thirty-six members and

each member represents one jute mill. The Company was incorporated with the object of promoting and looking after the welfare and interest of the jute industry.

The petitioners are aggrieved by the Notification dated 30th September, 2021 published by the Jute Commissioner, Ministry of Textiles, in the Gazette of India, Extraordinary whereby the Jute Commissioner fixed the reasonable price of jute in all forms to be in force until 30th June, 2022 or until further orders whichever is earlier.

The said notification was published in exercise of the powers conferred under Clause 3 (3) of the Jute and Jute Textiles Control Order, 2016, herein after referred to as the 'Control Order, 2016'.

The Notification mentions that no dealer, trader, agency or supplier or any other person shall sell or offer to sell any person or agency and no person, agency or company shall offer to purchase or purchase any raw jute at a price exceeding the reasonable price mentioned in the Notification.

The reasonable price for raw jute in respect of TD-5 variety was fixed at Rs. 6500/- per quintal in the State of West Bengal.

The Notification further mentions that the amount of interest /penalty etc. payable, if any, by the purchasers on delayed payments or for any other reasons are matters solely between purchaser and supplier and will be outside/additional to the above ceiling reasonable prices.

The petitioners are also aggrieved by the act of the Jute Commissioner restraining the Jute Balers' Association from publishing quotations exceeding the notified reasonable price.

According to the petitioners, the price that has been fixed by the Jute Commissioner is not the reasonable price at which raw jute of the above variety is

available in the market. It is the specific contention of the petitioners that raw jute is available in the market at a price higher than that has been fixed by the Jute Commissioner.

It has been submitted that the Jute Commissioner does not have the power to direct the Jute Balers' Association to publish quotation at a fixed price and not the actual price at which raw jute is sold in the open market.

It is the further contention of the petitioners that the Jute Commissioner fixed the reasonable price of raw jute without taking into consideration the ground realities. The reasonable price that has been fixed is impractical and is impossible to be implemented by the sellers as well as the purchasers.

It has been argued that it is the duty and obligation of the Jute Commissioner to ensure that raw jute is available in the open market at the notified rate. In the event raw jute is sold at a rate higher than the reasonable price mentioned in the notification, then the Jute Commissioner ought to take appropriate steps against the persons responsible for buying/ selling the same.

It has been submitted that the price fixed in the notification does not take into consideration the charges on account of freight, transportation, handling and storage cost of raw jute which is contrary to the Control Order, 2016. The price fixed is absurdly low and cannot be implemented even with coercive measures.

It has been submitted that the finished products from the said raw jute are purchased in bulk by the Government and the reimbursement is at the rate which has been fixed by the Jute Commissioner. As the price of raw jute has been fixed at such low rate accordingly, the petitioners are not reimbursed the actual price of the finished products. In view of the same, the petitioners are suffering huge losses on regular basis.

In view of non-availability of raw jute at the fixed price, the petitioners are compelled to purchase raw jute at higher rates. As the petitioners cannot sell their products in the open market but have to sell the finished jute bags in bulk to the Government accordingly, they are undergoing sustained financial loss. The cost price of the finished product is always far more than the selling price.

On account of the continuous loss suffered by the jute mill owners, they are forced to close down their mills resulting in loss of employment to several workers. The mill owners are also not in a position to pay their workers and their suppliers. The same is causing unrest and resentment amongst the workers and the suppliers.

The petitioners heavily rely upon an order dated 20th June, 2016 passed by this Court in WP 369 (w) of 2016 + CAN 5932 of 2016 with WP 9409 (w) of 2016 wherein this Court disposed of the writ petition by directing that the Jute Commissioner from the month of July, 2016 onwards would fix the price of B.Twill bags on the basis of preceding three months moving average of raw jute as per quotation of Jute Balers' Association and M/s. A. M. Mair & Co.

It has been submitted that the Jute Commissioner is acting contrary to the above direction passed by the Court. It has been contended that the rate ought to be fixed by the Jute Commissioner on the basis of the preceding three months moving average as per quotation. In the present case, the Jute Commissioner has restrained the Jute Balers' Association to publish any quotation exceeding the price notified by the Jute Commissioner.

The petitioners pray for issuance of writ of Mandamus commanding the Jute Commissioner to forthwith withdraw the letter dated 20th October, 2021 directing the Jute Balers' Association to publish the price quotation at Rs. 6500/- per quintal irrespective of the price at which raw jute is sold in the market.

Prayer has also been made to ensure that raw jute is available to jute mills at the rate notified in the impugned notification dated 30th September, 2021.

The petitioners have also prayed for a direction upon the Jute Balers' Association and A.M. Mair and Company Private Limited to publish quotation for raw jute at the price at which the same is available in the market.

Prayer has also been made that, in the alternative, direction may be issued upon the Jute Corporation of India Limited (JCI) to purchase raw jute directly from the cultivators and make the same available to the jute mills at the notified rate.

The prayers of the petitioners have been vehemently opposed by all the respondents.

On behalf of the Jute Commissioner it has been submitted that according to paragraph 3 of the Control Order, 2016 the Jute Commissioner is the competent authority to fix the price at which raw jute may be purchased or sold for a different area or for different varieties. The said price is fixed based on the Minimum Support Price (MSP) declared by the Central Government.

The Jute Commissioner fix the price of raw jute by taking into consideration the varieties, grades and specifications of raw jute, the freight and other expenses necessary for transport, handling and storage of raw jute from the growing area to the area or areas in relation to which such price is fixed. The reasonable price that has been fixed by the Jute Commissioner after taking into consideration all the factors mentioned hereinabove has been published in the Gazette of India (Extraordinary) and as per the Control Order, 2016 and no person is entitled to sell or offer to sell or purchase or offer to purchase raw jute at a price exceeding the notified rate.

It has been submitted that the Jute Commissioner has taken steps against the persons responsible for selling/ purchasing raw jute at a price exceeding the

notified rate. It has been contended that the writ court is not the appropriate forum to take a decision with regard to the grievance of the petitioners.

The provision for appeal as available in the Control Order, 2016 has been relied upon. It has been submitted that any person aggrieved by an order of the Jute Commissioner is to prefer an appeal before the Central Government.

It has been submitted that the Jute Commissioner has definite instances that raw jute is available in the market at the notified rate and the petitioners ought to purchase raw jute from the suppliers who are ready and willing to sell the same at or below the rate as mentioned in the Gazette Notification.

It has been contended that the petitioners themselves are responsible for the hike in the rate of raw jute as the mill owners do not make prompt payment to the cultivators and the suppliers. Delayed payment of the price of raw jute by the mill owners is one of the primary reasons for non/ less availability of raw jute at the notified price.

On behalf of the Jute Corporation of India Limited (JCI) it has been submitted that even though there has been bumper crop in the current year, the MSP of jute has remained unaltered. JCI comes to the aid of the cultivators only when the selling price of raw jute falls below the rate which is fixed by the Commissioner for agricultural costs and prices. JCI makes direct payment to the distressed cultivators.

It has been contended that JCI is not liable to purchase raw jute at the notified rate from the cultivators as prayed for by the petitioners. The abnormal price hike in the market for raw jute is because of illegal hoarding of raw jute by unscrupulous traders and by persons not associated with the jute industry.

MSP of raw jute in respect of TD 3 is Rs. 4,500/- per quintal. It has been contended that the alternative prayer made by the petitioners is not maintainable

against JCI as the Company has been set up for an entirely different purpose, that is, to come to the aid of the distressed farmers and not for the purpose of purchasing raw jute at reasonable price notified by the Jute Commissioner and then sell the same to the jute mills.

It has been contended that the prayers made against JCI are absolutely misplaced and arise from total misconception about the role of JCI.

On behalf of the Jute Balers' Association it has been submitted that the reason for sky rocketing of the price of raw jute in spite of bumper production is primarily because of non-payment/ delayed payment of raw jute by the jute mills to the raw jute suppliers. A sizeable number of mills have refused to clear the outstanding dues. The list of defaulting mills is increasing year by year. In order to lure the raw jute suppliers, the mills are giving them incentive to make payment of old dues against supply of fresh consignments of the same value. The vicious circle continues eternally without any full and final settlement of the dues.

As a desperate attempt to procure raw jute, the mills intentionally keep increasing the prices to lure hesitant and helpless suppliers pushing the overall market prices upwards sending a false sense of scarcity. As many of the mills cannot purchase the raw jute at higher rates they are forced to close down leaving thousands of workers jobless. Though the mill owners receive prompt payment from the Government on account of the jute bags sold to them, they more often than not, delay in making payment to the raw jute suppliers.

It has been submitted that several meetings were held by and between the responsible officers of the Central Government, State Government, Jute Commissioner, Jute Balers' Association and others for settling the issue of exorbitant price rise of raw jute, but none of the meetings yielded any positive result.

It has been submitted that the writ petition is a ploy on the part of the petitioners to indirectly raise the price of raw jute. It has been contended that the mill owners themselves, to a great extent, are responsible for the rise in price of raw jute. Had the owners cleared the dues of the cultivators, suppliers on time this situation may not have arisen.

It has been submitted that the period from March to June is the lean season for production of jute during which there is scarcity of raw jute, but thereafter with the change of season, there is hardly any scarcity and enough raw jute is available in the market. As the mill owners do not make prompt payments accordingly, the sellers have no other alternative but to raise the price of raw jute and sell the same to the mills with the sole purpose of recovering some of the losses that they have incurred on account of non-receipt of their legitimate dues. The owners who make prompt payments are supplied raw jute at the notified rates.

On behalf of the Union of India, it has been submitted that the writ application is liable to be dismissed on account of suppression of material facts. The petitioners have approached the Court with unclean hands. The petitioners vide letter dated 16th October, 2021 has appreciated the stand of the Jute Commissioner in fixing the ceiling price of raw jute. The said letter also mentions that the same is helpful to stall the skyrocketing price of raw jute in the open market.

It has been submitted that jute is not a usual commodity which is available in the open market. The jute industry is an endangered industry and for the protection of the industry various orders are passed from time to time. The decision to fix the ceiling price of raw jute is a policy decision of the Government with a view to control fluctuations in the price of jute products thereby causing financial damage to the jute industry. Despite bumper production, the MSP of raw jute of TN 5 variety has been maintained at Rs. 4,500/- per quintal, whereas the reasonable

price of raw jute has been fixed at Rs. 6,500/- per quintal, that is, Rs. 2,000/- more than the MSP. This rate gives huge profits to the jute farmers for their produce.

It has been contended that any unusual increase in price of raw jute will lead to increase in the price of jute bags meant for different Government agencies. Any increase in the notified rate of raw jute will be a drain of the State exchequer, as the Government will be required to pay more to the jute mills for purchasing the finished products.

It has been contended that increase in reasonable price of raw jute will no way benefit the farmers because the higher amount will never trickle down to the farmers but will be enjoyed by the middle men. Fixing the reasonable price is essential to maintain the already endangered jute industry and for protection of the persons related to the jute industry.

The State respondents submit that it is the duty and obligation of the Jute Commissioner to implement the rate that has been notified as the reasonable price. The Jute Commissioner has failed to take steps to ensure that raw jute is available at the notified rate. Several interactions were held by the responsible officers of the State Government to solve the issue, but due to the inaction on the part of the officers of the Union of India, there is an impasse which is yet to be resolved.

Learned advocate representing the State relies upon the decision passed by the Hon'ble Supreme Court in the matter of **Comptroller and Auditor General vs K. S. Jagannath & Anr.** reported in **(1986) 2 SCC 679** paragraph 20 and submits that as the Union of India failed to exercise the duty conferred upon it by the statute accordingly, the High Court in exercise of its jurisdiction under Article 226 can issue a writ of mandamus to compel the performance in a proper and lawful manner to prevent injustice to the parties.

The respondents pray for dismissal of the writ petition.

I have heard and considered the rival submissions made on behalf of all the parties. The counsels of all the parties were given enough opportunities to suggest an amicable solution to the stalemate condition which the jute industry is facing, but for reasons best known to the parties, none came up with any solution which could show any light to enlighten the lives of lakhs of persons associated directly or indirectly with this industry.

A preliminary issue has been raised with regard to the maintainability of the writ petition before this Court. It has been submitted that an appellate forum is available in law and the petitioners ought to approach the said forum for redressal of their grievances.

Paragraph 10 of the Control Order, 2016 reads as follows:-

Any person aggrieved by an order of the Jute Commissioner made under this Order may prefer an appeal to the Central Government within 30 days of the date of communication to him of such order and the Central Government may after giving the appellant an opportunity of being heard, pass such order on the appeal as it thinks fit:

Provided that the Central Government may entertain an appeal after the expiry of the said period of 30 days if the appellant satisfies the Central Government that he has sufficient cause for not preferring the appeal within the specified time.

The aforesaid provision implies that a formal order is required to be passed by the Jute Commissioner and the said order must be communicated to the party then only the cause of action for preferring an appeal arises. In the present case, no formal order was passed by the Jute Commissioner. There was also no communication from the end of the Jute Commissioner to the petitioners about any formal order being passed. The petitioners are primarily aggrieved by the Notification published in the official gazette and they do not challenge any order passed by the Jute Commissioner.

Any order passed by the Jute Commissioner under paragraphs 5, 6, 8 and 9 of the Control Order, 2016 will be appealable under paragraph 10 of the Control Order, 2016.

In the present case, the Jute Commissioner invoked power under paragraph 3 of the Control Order which is under challenge herein. The same is not appealable and accordingly the preliminary objection raised by the respondent is overruled.

From the tenor of the arguments made on behalf of all the parties, it appears that, none challenges the authority, competence and jurisdiction of the Jute Commissioner to fix price of raw jute as per the Control Order, 2016. It has been practically admitted by the parties that Jute Commissioner is the competent authority to fix the price of raw jute.

The power to fix price flows from paragraph 3 of the Control Order, 2016.

Paragraph 3 (3) of the Control Order, 2016 lays down that the Jute Commissioner may, by notification in the Official Gazette, fix the reasonable price at which any variety and grade of raw jute may be purchased or sold, and different prices may be fixed for different areas, varieties and grades of raw jute.

Paragraph 3 (4) of the Control Order, 2016 lays down that while fixing the reasonable price the Jute Commissioner shall have regard to the variety and grade of raw jute, freight and other expenses necessary for the transport, handling and storage of the raw jute and any other relevant factor or factors.

The issue in the present case is whether the price fixed by the Jute Commissioner is reasonable or not.

According to the mill owners the notified rate is impractical. The Jute Balers' Association submits that the price rise is because of huge dues that have remained unpaid by the mill owners. Union of India submits that illegal hoarding is one of the

principal reasons for non-availability of raw jute at the notified rate. MSP fixed by JCI is Rs. 2,000/- less than the reasonable price notified by the Jute Commissioner. As there has been bumper growth of jute, the question of non-availability or scarcity in supply of raw jute does not arise at all.

The Hon'ble Court passed order on 20th June, 2016 on the basis of the settlement arrived at in between the respective parties to the writ petition. The terms of settlement speaks about fixation of price of B.Twill bags. The said terms of settlement do not relate to fixation of price of raw jute. As the said order was passed on mutual consent and settlement between the parties, accordingly, no ratio has been laid down in the said order which is to be followed and implemented at a future date. In the present case, in spite of repeated endeavours by the parties it appears that they have failed to arrive at a settlement, leaving the issue to be decided by the Court.

Court, not being an expert body, does not have the mechanism to fix the price of any product. Court is neither the competent authority to do the same. Statute casts this onerous duty upon the Jute Commissioner. It is not only a statutory duty but an obligation of the Jute Commissioner to fix the price of raw jute after taking into account the relevant considerations and to adopt all necessary methods to implement the said price, otherwise the price fixed by the Jute Commissioner will lose its relevance and the purchasers will be left at the mercy of the traders who are openly selling the product at rates higher than the notified rate.

In such a situation, the most pertinent question is - what is the reason for such hike in price of raw jute despite bumper growth? When there is abundant supply, the price ought to have come down. The fact that the price is spiralling upward instead of coming down, implies that something is going wrong somewhere. There must be some loop holes which are required to be plugged. But who will bell the cat, is possibly the next relevant question.

Control Order, 2016 lays down the various powers that the Jute Commissioner enjoys. It has power to regulate stocks of raw jute, power to ensure easy availability of raw jute, power to call for information and to inspect, search and seizure. It is the bounden duty and statutory obligation of the Jute Commissioner to invoke powers conferred under the Statute for implementation of the rate notified in the Official Gazette. The Jute Commissioner will be failing in his duties if raw jute is not available at the notified rate but is to be purchased at a rate higher than the rate that is notified.

Pending disposal of the instant writ petition the Court passed interim orders directing the Jute Commissioner to ensure that raw jute is available at the notified rate. The petitioners have come up with specific instances to highlight and draw the attention of the Court that despite the interim order, selling price of raw jute was way above the notified rate. Though on behalf of the Jute Commissioner it has been submitted that action has been taken against the person(s), agencies responsible for selling jute at a price exceeding the notified rate, but the ground reality is that the notified rate is not adhered to.

It has been alleged that the officials of the State are not extending the necessary help and cooperation to the officers of the Central Government. Taking advantage of the difference between the State and the Central, the hoarders and black marketers are taking active role in selling raw jute at an exorbitant rate.

Raising the notified rate possibly is not the solution to the problem. A check and balance is to be maintained. With a rise in the notified rate, the government will be liable to reimburse the mill owners the higher rate, which in turn will put a pressure on the exchequer and most likely, the higher rate will not reach the hands of the poor cultivators and will fizzle out in the middle rung.

Permitting publication of quotation with the actual selling price will also not actually help solve the issue. In that event also the owners will demand reimbursement on the rate published in the quotation which will inevitably be higher than the notified rate.

Jute Commissioner being the statutory authority is liable to take all necessary steps to ensure that raw jute is available at the notified rate. The Jute Commissioner ought to appreciate that fixing a rate which is not feasible serves no purpose. As the jute mills are legally bound to supply the jute bags to the government for which they are reimbursed at the notified rate they have no other alternative but to sell the finished products at a loss. With sustained losses the mills are bound to close down and the already dying industry will perish in no time.

On the other hand, if the notified rate is increased the government may not agree to pay more for the jute bags and the idea of switching over to cheaper alternatives may be a viable option. If that be so, then the jute mills, because of exorbitant rates, may not find any takers of their products. Large scale joblessness and economic crisis is bound to follow.

All the parties who are a part of the jute industry need to adopt a holistic approach and devise means not only to save but to revive the industry which is the pride of our country, especially Bengal. Reviving the industry will undoubtedly be a herculean task and joint effort of all stake holders is extremely important. Statute demands that the Jute Commissioner leads from the front. All the other organs of the Government need to extend their wholehearted cooperation to the Jute Commissioner if action is required to be taken against any person or agency who indulges in any activity leading to the rise in the notified rate.

The Jute Commissioner should collect first-hand information as regards the rate at which jute is available to the mill owners and thereafter notify the rate after

taking into consideration the freight, transportation, handling and storage charges. The rate should not be fixed upon extraneous consideration and the same must be reviewed at frequent intervals considering the ground realities. The Jute Commissioner should realise that the rate fixed should not be meant only for the purpose of publishing it in the official gazette but for the purpose of practical implementation of the same. Regular raids, search and seizure should be conducted to prevent illegal hoarding or any nefarious activity sending out false signals of scarcity. Stern action should be taken against any /all persons found indulging in any illegal activity and acting with vested interest leading to the rise in the price of raw jute.

The Jute Commissioner should invoke power bestowed by law for taking steps in the best interest of the industry and should not falter to take strict action against any person or agency who may try to meddle with the statutory authority in performing their duties, otherwise days are not far for the saga of the golden fibre to be put to rest for ever.

As the Court is of the considered opinion that the Jute Commissioner is the competent authority to fix the price, accordingly, permitting the Jute Balers' Association to publish a further quotation does not make sense. There ought not to be two rates at which the product is sold or purchased in the market; one being the notified rate, and the other, the actual rate at which raw jute is available. The same is going to create more confusion than provide a solution to the problem. Moreover, the mill owners are liable to be reimbursed only the notified rate. Publishing daily quotations, accordingly, does not serve any purpose.

The Jute Commissioner is directed to take positive steps and adopt stringent measures to implement the notified rate, but despite all efforts, if it appears that the notified rate cannot be adhered to, then the Jute Commissioner shall review and re-

fix the rate taking into consideration the relevant factors as mentioned in the Control Order, 2016.

Writ petition stands disposed of.

No costs.

Urgent certified photo copy of this judgment, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)