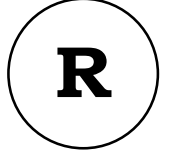


Reserved on : 03.07.2025
Pronounced on : 01.09.2025



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 01ST DAY OF SEPTEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.23927 OF 2024 (GM - RES)

BETWEEN:

- 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 - 560 001
EMAIL: secsismak@gmail.com

REPRESENTED THROUGH ITS SECRETARY
AND AUTHORIZED REPRESENTATIVE,
DR. SHANKARAYYA SALIMATH.

2. INDIAN SUGAR MILLS ASSOCIATION (ISMA)
ANSAL PLAZA, 'C' BLOCK, 2ND FLOOR
AUGUST KRINTI MARG, ANDREW GANJ
NEW DELHI - 111 049.
EMAIL: isma@indiansugar.com
REPRESENTED BY ITS DIRECTOR AND
AUTHORIZED REPRESENTATIVE
BHARATI BALAJI.

... PETITIONERS

(BY SRI UDAYA HOLLA, SR.ADVOCATE A/W

SRI DHYAN CHINNAPPA, SR.ADVOCATE FOR
SRI B.M.MOHAN KUMAR, ADVOCATE)

AND:

- 1 . UNION OF INDIA
THROUGH ITS SECRETARY,
MINISTRY OF TEXTILES
HAVING ITS OFFICE ADDRESS AT:
MINISTRY OF TEXTILES
UDYOG BHAWAN,
NEW DELHI – 110 011
EMAIL: secy-textiles@nic.in
THROUGH THE SECRETARY,
MINISTRY OF TEXTILES,
SMT. RACHNA SHAH.

- 2 . UNION OF INDIA
THROUGH ITS JOINT SECRETARY,
MINISTRY OF TEXTILES
HAVING ITS OFFICE ADDRESS AT:
MINISTRY OF TEXTILES
UDYOG BHAWAN, NEW DELHI – 110 011
EMAIL: js-ajaygupta@gov.in
THROUGH THE JOINT SECRETARY,
MINISTRY OF TEXTILES,
MR. AJAY GUPTA.

- 3 . INDIAN JUTE MILLS ASSOCIATION
THROUGH IT'S DIRECTOR GENERAL
CIN:U17232WB1989NPL047311
HAVING ITS REGISTERED
OFFICE ADDRESS AT:
BENGAL CHAMBER BUILDING,
DALHOUSIE AREA ROYAL EXCHANGE,
3RD FLOOR 6, NETAJI SUBHAS ROAD,
KOLKATA – 700 001
EMAIL: ijma@ijma.org.

- 4 . THE JUTE COMMISSIONER,
MINISTRY OF TEXTILES,
GOVERNMENT OF INDIA
HAVING ITS OFFICE ADDRESS AT:
PATSAN BHAWAN, CF BLOCK,
7TH AND 8TH FLOOR, ACTION AREA 1,
NEWTOWN, KOLKATA – 700 156.
MAIL: jcoffice@jutecomm.gov.in
THROUGH THE JUTE COMMISSIONER.

- 5 . DIRECTOR (SUGAR),
DIRECTORATE OF SUGAR,
DEPARTMENT OF FOOD AND
PUBLIC DISTRIBUTION,
MINISTRY OF CONSUMER AFFAIRS,
FOOD AND PD
HAVING THE OFFICE ADDRESS AT
KRISHI BHAVAN, NEW DELHI - 110 001
EMAIL: sangeet.cgda@nic.in
THROUGH THE DIRECTOR (SUGAR),
SH. SANGEET.

- 6 . JOINT SECRETARY (SUGAR),
DEPARTMENT OF FOOD AND PD,
MINISTRY OF CONSUMER AFFAIRS,
FOOD AND PD
HAVING THE OFFICE ADDRESS AT
KRISHI BHAVAN, NEW DELHI- 110 001
EMAIL: js-sugar@gov.in
THROUGH THE JOINT SECRETARY(SUGAR),
SH. ASWANI SRIVASTAVA.

... RESPONDENTS

(BY SRI K.ARVIND KAMATH, ADDL.SOLICITOR GENERAL A/W
SRI AJAY PRABHU M., CGC R-1, R-2 , R-4 ,R-5 AND R-6;
SRI ABRAJIT MITRA, SR.ADVOCATE A/W
SRI SHRAVAN S.LOKRE, ADVOCATE FOR R-3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO A) QUASH THE IMPUGNED NOTIFICATION BEARING NUMBER S.O. 5459(E) DATED 26/12/2023 (ANNX-A).; (B) QUASH THE IMPUGNED NOTIFICATION BEARING NUMBER S.O. 2500(E) DATED 28/06/2024 PASSED BY THE R1 (ANNEXURE-B); (C) QUASH THE IMPUGNED NOTIFICATION BEARING NUMBER S.O. 4319(E) DATED 01/10/2024 ISSUED BY THE R1 (ANNEXURE-AM); (D) QUASH THE IMPUGNED NOTIFICATION BEARING NUMBER S.O. 5653(E) DATED 31/12/2024 PASSED BY THE R1 (ANNEXURE-AP); (E) QUASH THE IMPUGNED NOTIFICATION BEARING NUMBER S.O. 1649(E) DATED 08/04/2025 ISSUED BY THE R1 (ANNEXURE-AQ); (F) QUASH THE IMPUGNED NOTIFICATION BEARING NUMBER S.O. 1830(E) DATED 22/04/2025 ISSUED BY THE R1 (ANNEXURE-AR); (G) DIRECT THE RESPONDENTS TO REMOVE SUGAR FROM THE PURVIEW OF JPMA IN THE LIGHT OF RECOMMENDATIONS OF (i) THE RANGARAJAN COMMITTEE IN 2012 (ANNEXURE-C); (ii) MINISTRY OF FOOD, CHIEF ECONOMIC ADVISORY AND COMMISSION FOR AGRICULTURAL COSTS AND PRICES ("CACP") FROM 2012 TO 2024 (ANNEXURE-D); (iii) MINISTRY OF FINANCE IN 2014; (IV) MINISTRY OF CHEMICALS AND FERTILIZERS (ANNEXURE-T); (V) COMPETITION COMMISSION OF INDIA AND (VI) OTHER STAKEHOLDERS INCLUDING ISMA.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 03.07.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioners/South Indian Sugar Mills Association, Karnataka and Indian Sugar Mills Association are before this Court calling in question Notifications dated 26-12-2023, 28-06-2024 and 01-10-2024 issued by Government of India. During the subsistence of the subject petition, other notifications come to be issued on 31-12-2024, 08-04-2025 and 22-04-2025; all of these are called in question and seeking a direction by issuance of a writ in the nature of mandamus to remove sugar from the purview of Jute Packaging Materials (Compulsory Use in Packing Commodities) Act, 1987 (hereinafter referred to as 'the Act' for short) in the light of several recommendations that are appended to the petition. In this order, facts would be referred to the 1st petitioner.

2. Facts, in brief, germane are as follows;

2.1. The 1st petitioner is the South Indian Sugar Mills Association, a society registered under Section 17 of the Karnataka Societies Registration Act, 1961 the registration of which happens

on 06-11-1995. The petitioner claims to have a strength of 41 sugar mills in Karnataka as its members. The respondents are the respective departments of Government of India in the Ministry of Textile and the 3rd respondent is the Indian Jute Mills Association, a premier industrial Association of Jute Mills in India and is incorporated under the provisions of the Companies Act, 2013. Respondents 4, 5 and 6 are the Jute Commissioner of Textile and the Department of Food and Public Distribution, Ministry of Consumer Affairs. Therefore, except the 3rd respondent, all other respondents are various departments of Government of India. The aforesaid are the protagonists in the *lis*.

2.2. Government of India enacts the Act in the year 1987 to help the jute industry to develop and modernize. Notifications are issued from time to time under the Act, mandating jute packaging for four commodities i.e., cement, fertilizers, sugar and food grains. Cement which was mandated under the Act comes to be exempted in terms of a notification dated 15-12-1998 owing to hygroscopic nature of the commodity, loss on account of seepage and health hazards to workers. Thereafter, by a subsequent notification,

fertilizer was exempted from the purview of the Act owing to certain technical unsuitability. The compulsory packaging percentage of sugar under the Act is said to have undergone certain dilution in 1987. The averment in the petition is that, the Economic Advisory Council to the Prime Minister submits a report on 05-10-2012 titled 'the Regulation of Sugar Sector in India: The Way Forward'. The report is said to have examined the issues relating to regulation of sugar sector and bringing about suggestions and way to promote efficiency and investments in the said sector. In the said report, the Committee recommended that sugar should be entirely removed from the purview of the Act.

2.3. The other wing of the Government, the Commission for Agricultural Costs and Prices which comes under the Ministry of Agriculture is said to have, in various jute policy reports, issued on an annual basis assessing market data from year to year, opined that the Act and the notifications therein are detrimental to the interest of both jute industry and sugar industry. Recommendations emerge from the aforesaid opinion reducing the mandatory packaging requirement in a phased manner so as to

ensure that the demand for jute packing does not crowd out the supply of raw jute for other diversified jute goods. Several other recommendations are projected as averments in the petition that sugar industry should not be imposed upon jute package for the sugar products. Notwithstanding the aforesaid opinion, it appears that compulsory usage of jute bags to the tune of 20% was imposed upon sugar factories. Therefore, sugar factories have objected to the same and the objection of which goes unheeded and again the Cabinet Committee of Economic Affairs in its meeting held under the Chairmanship of the Prime Minister decided to retain the mandatory packaging norms for food grains and sugar as per prevailing norm. Accordingly, 100% of the food grains to be packed in jute material and 20% of sugar manufactured was directed to be mandatorily packed in diversified jute bags for the years 2020-21.

2.4. Every year the said notification is issued and from the date of filing of the petition the notifications hitherto of the kind are challenged and from the date of filing of the petition, the notifications subsequent to the filing are also brought under challenge by way of amendment. The pre-amendment or post-

amendment of the petition, what remains is the jute packaging material to be used in food grains industry to the tune of 100% and in the sugar industry to the tune of 20%. The petitioners, as observed hereinabove, are sugar manufacturers. Therefore, they are aggrieved by the imposition of 20% of the sugar manufactured to be packed in jute bags. It is, therefore, the challenge in the petition to the notifications which mandate usage of jute bags in packing.

3. Heard Sri Udaya Holla, learned senior counsel along with Sri Dhyan Chinnappa, learned senior counsel appearing for the petitioners, Sri K. Arvind Kamath, learned Additional Solicitor General of India appearing for respondents 1, 2, 4, 5 and 6 and Sri Abrajit Mitra, learned senior counsel appearing for respondent No.3.

SUBMISSIONS:

For the Petitioners:

4. The learned senior counsel **Sri Udaya Holla** along with the learned senior counsel **Sri Dhyan Chinnappa**, would in unison contend that Government of India only to promote jute industry is

putting every citizen to a health hazard. The jute to be converted to bags must use jute batching oil for packing of food materials like sugar. The learned senior counsel would submit that, according to various reports which are placed before Court, the usage of jute batching oil which is used for weaving the jute into bags, has tumorigenic. They would submit that the State Governments like Punjab, Haryana and Andhra Pradesh have all cited concerns on the contamination of jute batching oil with sugar and its consequent health concern.

4.1. The learned senior counsel would further contend that only 3% of jute batching oil is being used in jute bags. It is still a health hazard. There is no report to show that contamination of 3% of jute batching oil is not carcinogenic. Since package is ready to eat sugar, the health hazard on the face of it ensues. The learned senior counsel would submit that Section 4 of the Act mandates that Standing Advisory Committee has to consider several aspects while rendering its recommendation for mandating usage of jute bags in the food industry. It is their submission that 31st Standing Advisory Committee held on 26-05-2023 has opined that sugar

must be granted 100% exemption. Even after that 20% is imposed by Government of India in ignorance of the recommendation. Therefore, it is in ignorance of the statute.

4.2. Jute year begins from 1st of July of a particular year and ends on 30th June next year. The Committee is required to recommend for each jute year as to the usage of jute bags in the food industry or packaging industry. The petitioners have been seeking exemption from compulsory jute packaging mandate, citing manifold reasons, one of which is the health hazard and the other to the shortage supply of jute itself, since jute is now imported from Bangladesh and for the financial year 2022-23 the country could meet 55% of the total jute bag requirement. They would contend that for the international markets and exports, the food industry is completely exempted from the Act. The learned senior counsel would emphasize on the fact that jute bags with plastic liners which are directed to be used are equally harmful and it is not the solution to the problem. Use of jute bags will result in absorption of moisture and the buyer of sugar will face the brunt. On all these submissions, the learned senior counsel would seek quashment of

notifications that mandate 20% of the sugar industry to be packed in jute bags and consequently the removal of sugar itself from the purview of the Act.

For the Union of India:-The Additional Solicitor General of India

5. Per contra, the learned **Additional Solicitor General of India Sri K. Arvind Kamath** would vehemently refute the submissions to contend that the mandate of the Act cannot be whittled down for the convenience of sugar industry. The sugar industry is looking at its commercial ventures and for the development of jute industry which involves farmers cannot be ignored by the Government and accept the objections of the sugar industry every time when notification is issued. The Additional Solicitor General of India would take this Court through various recommendations and deliberations by the Government to contend that this Court in exercise of its jurisdiction under Article 226 of the Constitution would not quash the notifications, which are the product of several deliberations of the Committee, approved by the Prime Minister, all in the interest of farmers of the nation. He

would submit that the petition is misconceived and should be dismissed with exemplary costs.

For the Indian Jute Mills Association:

6. The learned senior counsel **Sri Abrajit Mitra** representing the 3rd respondent would vehemently refute the submissions by taking the Court through the entire spectrum of development of law. It is his submission that on 29-05-1987 mandatory packaging of 100% sugar in jute bags was introduced which comes down to 20% in the year 2014. It has remained at 20% till today and these objectors who are sugar manufacturing industry never put forth in their objections that it is carcinogenic. It is for the first time they are projecting it before this Court. The learned senior counsel would further submit that the mandate of the Act is reviewed every jute year and the recommendation for every year has been 20% only in respect of sugar industry. The rest of 80% the sugar industry is free to use any other packaging material permitted in law. It is only 20% that is sought to be imposed, owing to the fact of development of jute growing farmers and jute industry, a native industry. He would contend that Government of India cannot be

said to be ignorant of the health hazards, if any, in mandating 20% for jute packaging. It is his submission that it is not carcinogenic and insofar as shortage of jute is concerned, that was only for a particular year. The report now is that it is in surplus. Therefore, none of the submissions made by the respective learned senior counsel for the petitioners would hold water. The mandate of the Act must be followed. It is not 100% that is mandated but only 20% is his reiteration.

7. I have given my anxious consideration to the submissions made by the respective learned senior counsel and have perused the material on record. In furtherance whereof, the following issues arise for consideration:

THE ISSUES:

- (i) Whether this Court would accede to the demand of the petitioners' commercial enterprise, or follow the mandate of the Act?**

- (ii) Whether the projection of presence of carcinogenic material in jute batching oil, has**

such authenticity, for this Court to so consider and direct stoppage of its usage? and

(iii) Whether shortage of jute supply has crippled the mandate of the Act?

CONSIDERATION:

Issue No.1:

(i) Whether this Court would accede to the demand of the petitioners' commercial enterprise or follow the mandate of the Act?

Facts necessary for consideration of the issue:

8. The position of the petitioners is as afore-narrated. The entire fulcrum of the *lis* revolves round the Act. The Act was enacted with a singular object, to safeguard and sustain the jute industry, which by reason of labour-intensive character constitutes the economic life blood of millions of cultivators and labourers in the industry. It was promulgated on 09-05-1987, to provide for 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 and the persons engaged in the production thereof. It is germane to notice the objects and reasons of the said enactment. It reads as follows:

“STATEMENT OF OBJECTS AND REASONS

The jute industry occupies a significant position in the national economy, and more particularly, in the economy of the north-eastern region of the country. It is agro-based, labour intensive, export oriented and its raw material input base is entirely indigenous. It provides direct livelihood to nearly four million rural agricultural families and 2.5 lakhs industrial workers.

2. The jute industry has been passing through a severe crisis in recent years, mainly on account of the stiff competition between the jute packaging materials and synthetic substitutes. Government have recognized the importance of jute industry and accordingly, a number of measures have been taken recently for increasing raw jute productivity, for modernizing of the jute mills, support for the activities of research and development and product diversification in the industry. In addition to these measures, it has also been considered necessary to afford protection to the industry by specifying through legislation the compulsory use of jute packaging material in commodities declared to be essential commodities under the Essential Commodities Act, 1955 and articles produced in a scheduled industry as defined in the Industries (Development and Regulation) Act, 1951.

3. While the legislation seeks to protect the interests of the persons engaged in raw jute production and jute industry, a balanced view of the recent developments in the national economy has also been taken into account. As such, it is not proposed to make the packing in jute packaging materials compulsory, for all commodities or classes of commodities or their entire production. The legislation itself is of an enabling nature

under which Government would issue from time to time notified orders specifying certain commodities, class of commodities or the percentage thereof which should use only jute material in packaging for the distribution or supply of the commodities. The Bill also provides that before the issue of such notified order, it would consider the recommendations of a Standing Advisory Committee which would give its opinion on the basis of the guidelines included in the legislation itself. It is felt that these guidelines will take care of the interests of the jute economy on the one hand and the needs of the end users on the other. In addition to the above, the Bill provides for penalties for contravention of the notified order, power to enter and search and seizure and other necessary provisions.

4. The Bill seeks to achieve the above objects.

New Delhi
The 10th March, 1987"

RAM NIWAS MIRDHA

[Emphasis added]

The objects and reasons are a precursor to what the Act would mandate. The jute industry occupies a significant position in the country's economy, particularly of the North Eastern region of the country. It was agro-based, labour intensive and raw material input base. All these were indigenous. The livelihood of nearly four million rural agricultural families and 2.5 lakhs industrial workers was the thought behind the enactment in 1987. It has grown tenfold today. Certain provisions of the Act are germane to be noticed.

9. Sections 2 to 5 of the Act read as follows:

2. Definitions.—In this Act, unless the context otherwise requires,—

- (a) “commodity” means—
 - (i) any essential commodity;
 - (ii) any article manufactured or produced by any scheduled industry;
- (b) “essential commodity” shall have the same meaning as in the Essential Commodities Act, 1955 (10 of 1955);
- (c) **“jute packaging material” means jute, jute yarn, jute twine, jute sacking cloth, hessian cloth, jute bags or any other packaging material containing not less than seventy-five per cent by weight, of jute;**
- (d) “scheduled industry” shall have the same meaning as in the Industries (Development and Regulation) Act, 1951 (65 of 1951);
- (e) **“Standing Advisory Committee” means the Standing Advisory Committee constituted under Section 4.**

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.

(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.

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.

(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. Prohibition of packing in any material other than the jute packaging material.—Where an order has been made under Section 3 requiring any commodity, class of commodities or any percentage thereof to be packed in jute packaging material for their supply or distribution, such commodity, class of commodities or percentage thereof shall not, on and from the date specified in such order, be supplied or distributed unless the same is packed in accordance with the order:

Provided that nothing in this section shall apply to the supply or distribution of any commodity, class of commodities or percentage thereof for a period of three months from the aforesaid date if immediately before that date such commodity, class of commodities or percentage, thereof were being packed in any material other than jute packaging material.”

[Emphasis supplied]

Section 2 deals with definitions. Section 2(c) defines a jute packaging material. Section 2(e) defines ‘Standing Advisory Committee’. Section 3 deals with commodities to be packed in jute packing material. Section 4 mandates that the Central Government with a view to determining the commodity or class of commodities with respect to jute packing material constitute a Standing Advisory Committee. The functions of the Standing Advisory Committee are also found in sub-section (2) of Section 4. Section 5 mandates where an order has been made under Section 3 requiring any

commodity, class of commodities or any percentage thereof to be packed in jute packaging material, it shall be packed and supplied in accordance with the recommendations of the Standing Advisory Committee.

10. In terms of sub-section (1) of Section 3, the Government of India in the Ministry of Textiles, issues notification of usage from time to time, which was earlier 100% and is now divided. The notification reads as follows:

"MINISTRY OF TEXTILES
ORDER
New Delhi, the 31st January, 2014

S.O. 294(E).—Whereas the Central Government under sub-section (1) of Section 3 of the Jute Packaging Materials (Compulsory Use in Packing Commodities) Act, 1987 (10 of 1987) (hereinafter referred to as the said Act) is empowered to specify the commodities or class of commodities or percentage thereof to be packed for the purpose of its supply or distribution in such jute packaging material as may be specified in the order, considering the recommendations of the Standing Advisory Committee;

And, whereas, the Central Government, in exercise of powers conferred under sub-section (1) of Section 4 of the said Act, has constituted the Standing Advisory Committee vide number S.O. 360(E), dated the 13th February, 2013, to recommend the norms of packaging in jute material;

And, whereas the Central Government, after considering the recommendations made to it by the Standing Advisory

Committee, is satisfied that it is necessary in the interest of production of raw jute and jute packaging material, and of persons engaged in the production thereof, to specify the commodity or class of commodities and percentage thereof to be packed in jute packaging material for the year 2013-14 (i.e. from July, 2013 to June, 2014);

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 3 read with sub-section (1) of Section 16 of the said Act, the Central Government hereby directs that the commodities specified in column (2) of the Schedule below, shall be packed in jute packaging material for supply or distribution, in such minimum percentage as specified in corresponding entries in column (3) of the Schedule, with effect from the date of publication of this notification in the Official Gazette for the year 2013-14 i.e., upto 30th June, 2014.

SCHEDULE

Sl.No.	Commodities	Percentage of total production of commodity or class of commodities required to be packed in jute packaging material manufactured in India from raw jute produced in India
(i)	Food grains	Ninety per cent (90%) of the production
(ii)	Sugar	Twenty per cent (20%) of the production.

Provided that the above provisions shall not apply to:-

- (a) sugar fortified with vitamins;
- (b) packaging for export of the commodities;
- (c) small consumer packs of twenty-five kilogram and below; and
- (d) bulk packaging of more than one hundred kilogram/s.

2. Sugar packed for export but which could not be exported may be exempted from the operation of this order on the basis of an assessment by and request of the Department of Food and Public Distribution.

3. In case of any shortage or disruption in supply of jute packaging material or in other contingency/exigency, the Ministry of Textiles may, in consultation with the user Ministries

concerned, relax these provisions further, up to a maximum of thirty per cent (30%) of the production of foodgrains.

[F. No. 9/16/2013-Jute]"

[Emphasis supplied]

In terms of sub-section (2) of Section 4, the Standing Advisory Committee ('the Committee' for short) recommended that sugar be exempted from mandatory packaging material. The recommendations of the committee are as follows:

"....

7. Director, Deptt. of Food and Public Distribution (DFPD) submitted that considering the gap between the anticipated requirement of jute bags and the supply/production of jute bags by the jute mills in the year 2022-23, **100% relaxation in wheat** may be considered in the mandatory reservation for packaging of foodgrains in jute bags or Reservation norms under JPMA be kept at **50% for wheat** and **90% for rice**. Sugar may be completely exempted from the mandatory packaging norms and the relaxation powers exercised by Ministry of Textiles may be increased from the present level of 30% of the procurement of foodgrains. DFPD further suggested that relaxation may be given on basis of projected requirement and not on the basis of actual indenting.
8. Chairman stated that, it is a reality that the jute industry has not been able to fully cater to the demand of jute bags by the State Procurement Agencies/FCI during the last several years. Also, the demand of jute bags is increasing year on year basis while the production by the jute mills is same by and large thus leading to a wide gap between the requirement and the supply of jute bags. However, the

production of jute for the year 2022-23 has been estimated to be even higher than the previous year.

9. The representative of D/o Chemical and Petro Chemical (DCPC) proposed that there should be free and fair competition choices of packaging material to the user sectors in the current scenario. There are incidences of shortfall in supply of jute bags by jute mills which may be assessed well in advance to arrange for alternate HDPE bags.
10. After considering the views expressed by the Stakeholders and those expressed by the Members, the Standing Advisory Committee noted the following:
 - (i) That nearly 3.7 lakhs workers and several lakh farm families are dependent on the jute sector for their livelihood. The jute industry has the capacity to produce the required quantity of jute sacking to meet the foodgrains. Based on the last four years' trends, as well as the targeted requirement to pack the quantity of foodgrains to be procured under the Food Procurement Programme, the demand for jute bags is likely to be in the range of 14.3 lakhs MT for packaging of foodgrains during the year 2022-23. The industry had demonstrated an average sacking production of 13.00 lakh MT which includes the requirement for other domestic sector.
 - (ii) As per projections of the Expert Committee on Jute (ECJ), 21.06 lakh MT of raw jute is likely to be available during the Jute Year 2022-23 which appears to be adequate to meet the demand by the jute mills/industry.
 - (iii) Jute is a bio-degradable and eco-friendly fibre, the jute industry requires adequate sustenance till further diversification and increase in share and presence in domestic and international markets.

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 :

- a. **Foodgrains: 100% of the foodgrains procured by SPAs/FCI may be reserved for packaging in jute bags.**
- b. **Considering the situation of demand driven supply of jute bags required for packing of foodgrains i.e. excess of demand over supply and non-availability of competitive prices due to capping of maximum price for jute bags by government, the Committee decided that the provision of indenting 10% jute bags through GeM would not be feasible. Hence, this provision may be removed in the proposal for mandatory packaging in jute bags for the year 2022-23.**
- c. **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**
- d. **Sugar:- Sugar may be exempted completely.**
- e. **Exemptions: The following may be kept out of the purview of reservation under the JPM Act:-**
 - (i) **Packaging for export of commodities;**
 - (ii) **Small consumer packs of 10 kgs and below for foodgrains; and**

(iii) Bulk Packaging of more than 100 kgs

The meeting ended with a vote of thanks to the Chair.”

[Emphasis supplied]

This was a recommendation. The recommendation was considered and another notification springs on 31-03-2023. The Notification reads as follows:

**“MINISTRY OF TEXTILES
ORDER**

New Delhi, the 31 March, 2023

S.O. 1532(E).-Whereas, the Central Government is empowered under sub-section (1) of section 3 of the Jute Packaging Materials (Compulsory Use in Packing Commodities) Act, 1987 (10 of 1987) to specify, by order, the commodities or class of commodities or such percentage thereof to be packed for the purpose of its supply or distribution in such jute packaging material, after considering the recommendations of the Standing Advisory Committee;

And whereas, the Central Government has, in exercise of the powers conferred under sub-section (1) of section 4 of the said Act, constituted the Standing Advisory Committee vide number S.O. 295(E), dated the 19th January, 2022, to recommend the norms of packaging in jute material;

And whereas, the Central Government, after considering the recommendations made to it by the Standing Advisory Committee, is satisfied that it is necessary in the interest of production of raw jute and jute packaging material, and of persons engaged in the production thereof, to specify the commodity or class of commodities and percentage thereof to be packed in jute packaging material;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 read with sub-section (1) of section 16 of the Jute Packaging Materials (Compulsory Use in Packaging Commodities) Act, 1987 (10 of 1987) (hereinafter referred to as the said Act), and in supersession of Orders numbers S.O. 5421(E), dated the 27th December, 2021 and S.O. 6172(E), dated the 30th December, 2022, except as respects things done or omitted to be done before such supersession, the Central Government hereby directs that the commodities specified in column (2) of the Table below, shall be packed in jute packaging material for supply or distribution, in such minimum percentage as specified in corresponding entries in column (3) of the said Table, with effect from the date of publication of this notification in the Official Gazette, upto the 30th June, 2023, namely:-

TABLE

Serial Number	Commodities	Minimum percentage of total production of commodity or class of commodities required to be packed in jute packaging material manufactured in India from raw jute produced in India
(1)	(2)	(3)
(i)	Foodgrains*	One hundred per cent. (100%) of the production
(ii)	Sugar**	Twenty per cent. (20%) of the production

***Note 1:-** Initially ten per cent. of the indents for foodgrains are to be placed through reverse auction on the Government e-Marketplace (GeM) portal.

****Note 2:-** In diversified jute bags under direct purchase by the procuring agencies from the mills or open market."

[Emphasis supplied]

31st Meeting of the Committee is notified and the Committee holds its proceedings on 26-05-2023 and makes the following recommendations:

"....

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:-

- a. **Foodgrains and Sugar:** 100% of the foodgrains and 20% of Sugar production may be reserved for packaging in jute bags.
- b. The provision of indenting 10% jute bags through GeM would be kept.
- c. 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.
- d. **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 foodgrains and 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.

The meeting ended with a vote of thanks to the Chair.”

Considering the recommendations, again a notification is issued on 26-12-2023, which reads as follows:

**“MINISTRY OF TEXTILES
ORDER**

New Delhi, the 26th December, 2023

S.O. 5459(E). - Whereas, the Central Government is empowered under sub-section (1) of section 3 of the Jute Packaging Materials (Compulsory Use in Packing Commodities) Act, 1987 (10 of 1987) to specify, by order, the commodities or class of commodities or such percentage thereof to be packed for the purpose of its supply or distribution in such jute packaging material, after considering the recommendations of the Standing Advisory Committee;

And whereas, the Central Government has, in exercise of the powers conferred under sub-section (1) of section 4 of the said Act, constituted the Standing Advisory Committee vide number S.O.295(E), dated the 19th January, 2022, to recommend the norms of packaging in jute material;

And whereas, the Central Government, after considering the recommendations made to it by the Standing Advisory Committee, is satisfied that it is necessary in the interest of production of raw jute and jute packaging material, and of persons engaged in the production thereof, to specify the

commodity or class of commodities and percentage thereof to be packed in jute packaging material;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 read with sub-section (1) of section 16 of the Jute Packaging Materials (Compulsory Use in Packaging Commodities) Act, 1987 (10 of 1987) (hereinafter referred to as the said Act), and in supersession of Orders numbers S.O. 1532(E), dated the 31st March, 2023, except as respects things done or omitted to be done before such supersession, the Central Government hereby directs that the commodities specified in column (2) of the Table below, shall be packed in jute packaging material for supply or distribution, in such minimum percentage as specified in corresponding entries in column (3) of the said Table, with effect from the date of publication of this notification in the Official Gazette, upto the 30th June, 2024, namely:-

TABLE

Serial Number	Commodities	Minimum percentage of total production of commodity or class of commodities required to be packed in jute packaging material manufactured in India from raw jute produced in India
(1)	(2)	(3)
(i)	Foodgrains*	One hundred per cent. (100%) of the production
(ii)	Sugar**	Twenty per cent. (20%) of the production

***Note 1:-** Initially ten per cent. of the indents for foodgrains are to be placed through reverse auction on the Government e-Marketplace (GeM) portal.

****Note 2:-**In diversified jute bags under direct purchase by the procuring agencies from the mills or open market."

Subsequent orders are passed on the 31st recommendation and the latest is on 28-10-2024, which reads as follows:

"To

CEOS/MDs of all Sugar Mills.

Subject: Compliance of packaging of sugar in Jute Packaging material as per the provisions of Jute Packaging Material (Compulsory Use in Packing Commodities) Act, 1987.

Madam/Sir,

I am directed to refer to this Directorate's letters dated 22.07.2024 and Ministry of Textile's Notification dated 01.10.2024 on the above subject and to say that all the sugar manufacturers are required to comply with the directions regarding mandatory jute packaging of 20% of the total production of sugar, as notified by Ministry of Textile under Jute Packaging Material (Compulsory Use in Packing Commodities) Act, 1987.

2. As you are aware that the interim order dated 05.09.2024 passed by Learned Single Judge. Hon'ble High Court of Karnataka in W.P. No. 23927/2024 staying the Ministry of Textile's Notification dated 26.12.2023 and 28.06.2024, has been set aside by Division Bench of Hon'ble High Court of Karnataka vide order dated 26.09.2024 in W.A. No. 1405/2024

3. Further, Ministry of Textile has issued an order bearing S.O. No. 4319(E) dated 01 10.2024 extending the mandatory packing of 20% of sugar in jute bags.

4. Keeping in view of the above, all the sugar mills are hereby directed to place their orders for procurement of jute bags for packing 20% of sugar produced in sugar season 2024-25 and ensure the compliance of Ministry of Textile's order dated 26.12.2023 and 01.10.2024 for mandatory packaging of 20% of the total production of sugar in the jute packaging material in letter and spirit. Further, all sugar mills are also directed to furnish the information of jute packaging in monthly P-2 from October-2024 onwards.

5 Non-compliance of the directions issued by this Directorate for Jute packaging of 20% of sugar produced

during current sugar season 2024-25, will be viewed seriously and strict action will be taken against non-compliant sugar mills under the provisions of Sugar(Control) Order, 1966 read with Section 3 of Essential Commodities Act, 1955.

Yours faithfully,
Swarnkar, 28/10124
(Sunil Kumar Swarnkar)
Under Secretary to the Government of India
Tele: 011-23380552"

[Emphasis supplied]

32nd meeting of the Committee was directed to meet in terms of Office Memorandum dated 14-08-2024. The meeting and the recommendations are as follows:

" "

12. 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: -
 - a. **Foodgrains and Sugar:** 100% of the foodgrains and 20% of Sugar production may be reserved for packaging in jute bags.
 - b. The provision of indenting 10% jute bags for food grains packaging are to be placed through reverse auction on GeM portal.
 - c. **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 production 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.

- d. **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 foodgrains and 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.

The meeting ended with a vote of thanks to the Chair.”

[Emphasis supplied]

This results in the latest Notification issued on 22-04-2025. It reads as follows:

**“MINISTRY OF TEXTILES
ORDER**

New Delhi, the 22nd April, 2025

S.O. 1830(E).-Whereas, the Central Government is empowered under sub-section (1) of section 3 of the Jute Packaging Materials (Compulsory Use in Packing Commodities)

Act, 1987 (10 of 1987) (hereinafter referred to as the said Act) to specify, by order, the commodities or class of commodities or such percentage thereof to be packed for the purpose of its supply or distribution in such jute packaging material, after considering the recommendations of the Standing Advisory Committee;

And whereas, the Central Government has, in exercise of the powers conferred under sub-section (1) of section 4 of the said Act, constituted the Standing Advisory Committee vide number S.O.295 (E), dated the 19th January, 2022, published in the Gazette of India, Extraordinary, Part- II, Section-3, Sub-section (ii), dated the 24th January, 2022 to recommend the determination for packaging in jute material;

And whereas, the Central Government, after considering the recommendations made to it by the Standing Advisory Committee, is satisfied that it is necessary in the interest of production of raw jute and jute packaging material, and of persons engaged in the production thereof, to specify the commodity or class of commodities and percentage thereof to be packed in jute packaging material;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 read with sub-section section 16 of the said Act and in supersession of Order number S.O. 5459(E), dated the 26th December, 2023, except as respects things done or omitted to be done before such supersession, the Central Government hereby directs that the commodities specified in column (2) of the Table below, shall be packed in jute packaging material for supply or distribution, in such minimum percentage as specified in corresponding entries in column (3) of the said Table, with effect from the date of publication of this notification in the Official Gazette, upto the 30th June, 2025, namely:-

TABLE

Serial Number	Commodities	Minimum percentage of total production of commodity or class of commodities required to be packed in jute packaging material manufactured in India from raw jute produced in India
(1)	(2)	(3)
(i)	Foodgrains*	One hundred per cent. (100%) of the production
(ii)	Sugar**	Twenty per cent. (20%) of the production

***Note 1:-** Initially ten per cent. of the indents for foodgrains are to be placed through reverse auction on the Government e-Marketplace (GeM) portal.

****Note 2:-** In diversified jute bags under direct purchase by the procuring agencies from the mills or open market."

[Emphasis supplied]

Therefore, every time, on the recommendation of the Committee, the Government has considered and retained 20% of the packaging material to be jute based.

11. The subject petition is preferred and an interim order is granted staying the notification. The interim order so granted on 05-09-2024 reads as follows:

"1. The petitioner challenges the notification issued by respondent No. 1, which mandates that 20% of the sugar produced must be packed in jute packaging material

manufactured in India from raw jute produced in India, effective until 30th September 2024.

2. Sri Uday Holla, learned Senior Counsel representing the petitioner, argued that the Standing Advisory Committee, in its meeting held on 21st July 2022, had exempted the packaging of sugar in jute bags. He further contended that the Industrial Toxicology Research Centre has opined that jute batching oil is tumorigenic.

3. Sri Aravind Kamath, learned Additional Solicitor General representing the Union of India, argued that the impugned notification has been issued in conformity with Section 3 of the Jute Packaging Materials (Compulsory Use in Commodities) Act, 1987 (hereinafter referred to as the "Act, 1987"). Section 3 empowers the Central Government to direct that certain commodities or classes of commodities, or a certain percentage thereof, be packed in jute packaging material for purposes related to the supply or distribution of such commodities, in the interest of promoting the production of raw jute and jute packaging material. Therefore, according to him, the impugned notification cannot be interfered with unless found to be arbitrary or discriminatory.

4. He further argued that the notification dated 4th August 1996 prescribes the maximum permissible limit for the use of batching oil in the manufacture of textiles.

5. Section 3 of the Act, 1987, authorizes the issuance of notifications mandating the packing of commodities, including sugar, in jute bags based on the recommendations of the Standing Advisory Committee. The impugned notification was issued pursuant to the recommendation of the Committee, which suggested that 20% of the sugar produced may be packed in jute bags. It is noteworthy that the requirement to pack 20% of sugar in jute bags is not applicable to bulk packaging exceeding 100 kilograms or to packaging for export of commodities; it applies only to the distribution and sale of sugar within the domestic market.

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 tumorigenic, the petitioner has made out a prima facie case for the grant of an interim order.

7. The operation of the impugned notifications dated 26.12.2023 at Annexure-A and dated 28.6.2024 at Annexure-B issued by respondent No.1 are stayed till the next date of hearing.

8. Liberty is reserved with the respondent for seeking vacation/modification of this interim order.

Relist on 24.9.2024."

This was called in question by the Union of India in W.A.No.1405 of 2024. The entire spectrum of these submissions was projected before the Division Bench. The Division Bench by the following order, sets aside the interim order holding that it was final in nature. The judgment of the Division Bench, in appeal, is as follows:

"....

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.

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 Committee's 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 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 SCC 104], 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 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 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.

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 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.

(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 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 GCD 1233]**, for the observations in paragraphs 32 and 33 thereof, to submit that it is incumbent on the part of the Standing Advisory Committee to

apply its mind afresh every year and the last year's 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 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.

(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.

(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 be 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 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.

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.

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 foodgrains and 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 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.

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.

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 SCC 260**, the Hon'ble 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 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 May 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 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 disintitiled 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. 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 SCC 73**, 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 SCC 227**, the Hon'ble 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."

10.2 In **Mahima Savin Bansal Vs. Savin Bansal and Others (2015) 16 SCC 228**, the Hon'ble Supreme Court referred to its own decision in **Hema Mishra v. State of U.P. and others [(2014) 4 SCC 453]** and in **State of Orissa v. Madan Gopal Rungta [AIR 1952 SC 12]**, 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 SC 1368]**, 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 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 SCC 260 at P. 265 : (AIR 1985 SC 330 at P. 333) State of Rajasthan v. M/s. Swaika Properties (1985) 3 SCC 217 at P 224 : (AIR 1985 SC 1289 at 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."

The present petitioners challenge it before the Apex Court. The Apex Court rejects the Special Leave Petition by the following order:

"1. Having heard the learned Senior Counsel appearing for the petitioners and having gone through the materials on record, we see no reason to interfere with the interlocutory order passed by the High Court of Karnataka at Bengaluru.

2. The Special Leave Petition is, accordingly, dismissed.

3. However, some priority may be given to take up the main proceedings for hearing.”

12. Jurisprudence is replete with the Apex Court and various High Courts considering the issue from time to time.

12.1. The Apex Court in the case of **DALMIA CEMENT (BHARAT) LIMITED v. UNION OF INDIA**¹, considered an identical circumstance, where such provisions of respective enactments identical to the Act were questioned and held that they are not violative of Articles 14 and 19(1)(g) of the Constitution of India. The Apex Court holds as follows:

“....

2. We have had the advantage of hearing a galaxy of learned Senior Counsel with their forensic legal skills to assail the constitutionality of Sections 3 to 5 of the Act and the orders issued by the Central Government on the anvil of Articles 14, 19(1)(g) and 301 of the Constitution and their repudiation with equal vehemence by the counsel appearing for the respondents. The petitioners' fundamental premise is that their right to carry on trade and business guaranteed by Article 19(1)(g) and free flow of trade and commerce throughout the territory of India under Article 301 has been impeded by operation of the Act, the Rules and the orders issued by the Central Government. The restriction by way of compulsory packing of their finished products with gunny bags is an unreasonable restriction; further, it is not in the interests of general consumer public. The word 'general' qualifies the whole public; in other words, the restriction must be

¹ (1996) 10 SCC 104

in the interest of the entire general public, namely, the consumers of diverse goods. It must not merely be a small section of the public, namely, the producer of jute. The restriction also must be for the advancement of, or to the benefit of the society as a whole. Packing with jute bags made compulsory irrespective of costs, suitability, availability, consumers' non-preference and hosts of other relevant factors, is arbitrary. Executive priority or preference to the jute sector at the cost of and in total disregard of the interests of other sectors like cement, sugar or alternative industry or general public would be unreasonable, arbitrary and a total prohibition. Therefore, the Act is illegal and void. No law should impose restriction for the benefit of a small section of the public at the detriment of an overwhelmingly large majority of the people. The Act intends to benefit only a small section of the society as is disclosed by the Statement of Objects and Reasons, namely, vague and indeterminate 4 million rural agricultural families and 2.5 lakh industrial workers in the jute industry in comparison with general consumers' community for whose benefit the Essential Commodities Act, 1955 and the orders issued thereunder was made for regulating the equitable distribution of the essential commodities at a reasonable price.

...

...

...

23. From this perspective, let us consider the constitutionality of the provisions of the Act. The Statement of Objects and Reasons and the Preamble of the Act, would, in unmistakable terms, indicate that it intends to provide livelihood to nearly 4 million rural agricultural families and 2.5 lakh industrial workers. The ancient agro-based jute industry occupied a significant position in our national economy, in particular in the economy of the North-Eastern region of the country. It is an agro-based and labour-intensive industry. It is also an export-oriented one and its raw material is based entirely on indigenous jute produced by the above agricultural families. Parliament avowedly intended to protect the interests of the persons involved in jute production; jute industry, therefore, requires protection.

24. A balanced view of the developments in the national economy requires to be taken into consideration to protect the interests of the farmers who produce jute or any other agricultural produce and in the interests of agro-based industry of the country and workers who deliver finished products. With that objective in view, the Act was made for 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 and the persons engaged in the production thereof for the matters connected therewith. Sections 3, 4 and 5 read thus:

"3. (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.

(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. (emphasis supplied)

4. (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.

(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. Where an order has been made under Section 3 requiring any commodity, class of commodities or any percentage thereof to be packed in jute packaging material for their supply or distribution, such commodity, class of commodities or percentage thereof shall not, on and from the date specified in such order, be supplied or distributed unless the same is packed in accordance with that order:

Provided that nothing in this section shall apply to the supply or distribution of any commodity, class of commodities or percentage thereof for a period of three months from the aforesaid date if immediately before that date such commodity, class of commodities or percentage, thereof were being packed in any material other than jute packaging material."

... ..

26. Sub-section (1) of Section 3, with a non-obstante clause, excludes the operation of any other law for the time being in force and, regulates use of jute or

jute packaging material in supply and distribution of certain commodities. It gives power to the Central Government, on being satisfied, on consideration of the recommendations made to it by the Standing Advisory Committee empowered to issue directions from time to time for use of the packing material. The primary purpose and object of such directions is to protect the interests of producer of raw jute and jute packaging material. The Central Government is enjoined to protect the interests of persons engaged in the production thereof. Such orders should be published in the Official Gazette. The orders need to be passed from time to time. From the date of such order specified therein, such commodity or class of commodities or such percentage thereof, as specified in the order, should be packed with jute packaging material specified in the order for the purpose of supply or distribution of such commodity or commodities. Under the proviso, until the Standing Advisory Committee is constituted under Section 4, the Central Government should consider, before making any order, the matters as specified in sub-section (2) of Section 4. The Central Government may make an order thereunder which shall cease to operate at the expiration of 3 months from the date of the recommendations of the Standing Advisory Committee.

...

30. The question, therefore, is whether directions issued by the Central Government for the compulsory packing of the commodities with jute packaging material, (in respect of sugar 100% use of the gunny bags and at varying percentage for other commodities) is unconstitutional? As stated earlier, the Act aims to accord socio-economic justice to the tillers of the soil by protecting the cultivation of raw jute and employment of the workmen engaged in the jute manufacturing industry. Jute is being produced and manufactured in North-Eastern States, West Bengal and Andhra Pradesh etc. as mentioned in the affidavit. A reading of the debates on the floor of Parliament on the Bill, does establish, cutting across the party lines, that all the members have spoken in favour of directing compulsory use of jute packaging material (gunny bags) for supply and distribution of the

commodities. As stated earlier, the object of the benign measure primarily is to protect the interests of growers of agricultural produce, who cultivate raw jute. Incidentally, the manufacturers and the workmen get benefit therefrom. Agricultural economy accords to the grower socio-economic justice to provide dignity of person, equality of opportunity to have his produce used in industry, etc. Agriculture is treated as industry on a par with any other industry. The State should provide, by legislative or executive measure, all facilities and opportunities to get them due price for their products and have them marked for use in industry. The orders passed by the Central Government are made subject to parliamentary control and subject to modification by both Houses.

31. Equally, the competing right to carry on trade or business guaranteed to a citizen or person is also to be protected. In the clash of competing rights of socio-economic justice of the producers of the agricultural commodities and of the individual right of a citizen to carry on trade or business, the latter yield place to the paramount social right. However, as rightly pointed out by the counsel, a balanced view has to be struck by the Central Government in directing use of jute packaging material at the percentage of the jute bags to be used for compulsory packing of the commodities which is subject to parliamentary control and approval. Parliament is the spokesman of the people where the need is felt most acute. When the orders passed under Section 3 are subject to modification by Parliament, Parliament preserved to itself a great salutary control over executive exercise of power under Section 3(1). It is such a valuable public protection and safeguard kept with Parliament itself. Parliament would be the best judge to discuss in each House as to what extent competing interests of the agricultural industry and the industry involved in commercial products need to be protected and would guide the Central Government appropriately by resolution or otherwise. When Parliament debates on the subject, it focuses its attention on all its constituents and it would be open to debate on the subject by participants from all the members of Parliament and political parties

and of shades of opinion. Parliament is entitled to direct the Central Government to place on the floor of each House the necessary factual material for discussion. They are the best judges to direct the Central Government to act on their advice in a particular way, based on the existing factual material. Parliament is empowered to overrule the order of the Central Government under Section 3(1) by disapproval.

32. It is a question of fact, to be considered in each case, as to what percentage is required to be used; it is primarily for the Central Government to decide as executive policy. The Central Government is guided by the material placed before it and the advice tendered to it by the Standing Advisory Committee constituted under Section 4 of the Act. It depends upon the availability of jute and its products in the market, the quantum of raw jute produced by the agriculturists, its demand in the market and its capability for diversification into other industries for ancillary use of the jute material and hosts of other factors enter into the decision-making process. The exercise is required to be undertaken from time to time. The Act, the Rules and the material placed before it by the Committee and the advice tendered by the expert body form the basis. The decision taken and directions issued cannot be said to smack of arbitrariness. Guidelines are available under the Act and the Rules made in this behalf. They are parliamentary control. Paramount public interest is to provide economic security and equality and justice to the producers of raw jute and the workers engaged in manufacturing jute packaging material.

... ..

44. In *Municipal Corpn. of the City of Ahmedabad v. Jan Mohd. Usmanbhai* [(1986) 3 SCC 20] a Constitution Bench of this Court held that normally the legislature is the best judge of what is good for the community but the court should not shirk its duty to determine the validity of the law. In determining the reasonableness of the restriction imposed by the law under Article 19(6), the court cannot proceed on a general notion of what is reasonable in the abstract or even on a consideration of what is reasonable from the view of the person or persons on

whom the restrictions are imposed. The court has to consider whether the restrictions are reasonable in the interest of the general public. The question of the interest of the general public is of wide import comprehending public order, economic welfare of the public, public security, morals and the objects mentioned in the Directive Principles. The test of reasonableness has to be viewed in the context of the issues which faced the legislature. In constructing such laws and judging their validity, courts must approach the problem from the point of view of furthering the social interest which is the purpose of the legislation to promote. They are not in these matters functioning in vacuo but as part of society which is trying, by the enacted law, to solve the problems and further the moral and material progress of the community as a whole.

... ..

47. The next question is whether the prohibition of 100% use of gunny bags by sugar industry and 70% by the cement industry is reasonable? It is true that the Committee constituted by the Government had recommended to phase out use of gunny bags on the ground that in a free market economy, now sought to be introduced, the restriction is not justified primarily to encourage free market. It is seen that the State has not abandoned and cannot abandon the mixed economy and power of regulation as mandated by constitutional policy. Parliament and the Executive are bound by the Constitution. The Act was made in implementation of socio-economic equality and policies. Even a private industry by operation of Directives contained in Part IV, is bound to adopt them, implement them and the Government policies to establish an egalitarian social order. The Committee in its free market frenzy became oblivious of the policy resolution of the Eighth Five Year Plan, the trinity, Preamble, Fundamental Rights and Directives. The executive policy of the State should be cognizant to these mandates which should always bind the Government and all agencies including private agencies. As seen, the Advisory Committee constituted under Section 4 has recommended 100% use of packing the sugar with gunny bags. On consideration of the report, the Government had acted upon the same. The economic policy to render socio-economic justice to the

growers of raw jute and the workmen is based on the above constitutional policy. Lest the report of the Committee on the basis of a free market economy would be in negation of the Preamble, the Directive Principles and the Fundamental Right to economic justice to the agriculturists. So the contention is clearly unsustainable. The Standing Advisory Committee, therefore, had properly advised and the Government obviously has taken decision to continue the policy of compulsory packing of commodities or class of commodities with jute bags, regulated under Section 3 of the Act. Parliament did not negate the same.

48. The further contention that on account of the regulation, HDPE industry has become unviable and is on the brink of liquidation and the Act tends to create monopoly in favour of private industry which does not get protection under Article 19(6), is untenable. This Court declines to examine the relative economic viability of the respective industries. It would be for the Central Government and Parliament and not for this Court to take into consideration the declaration of the Act as void. The Court has to see whether the Act serves the public purpose and the restrictions are reasonable. The Advisory Committee goes into factual details. The Government examines and takes policy decision. It lays the order on the table of both the Houses. Parliament controls exercise of power over executive policy. Restrictions are inbuilt and self-evident.”

[Emphasis supplied]

12.2. The Apex Court, a little later, in the case of **KRISHNAN KAKKANTH v. GOVERNMENT OF KERALA**², holds that infringement of fundamental right under Article 19(1)(g) must have a direct impact on the restriction of freedom to carry on trade and

² (1997) 9 SCC 495

not ancillary or incidental to the said trade. The Apex Court holds as follows:

"... .."

34. It has already been indicated that in *Viklad case* [(1984) 1 SCC 619: (1984) 1 SCR 657] it has been held by this Court that infringement of fundamental right under Article 19(1)(g) must have a direct impact on the restriction on the freedom to carry on trade and not ancillary or incidental effects on such freedom to trade arising out of any governmental action. It has also been held in that case that unless the trader or merchant is not wholly denied to carry on his trade, the restriction imposed in denying the allotment of wagon in favour of such trader or merchant to transport coal for carrying out trading activities does not offend Article 19(1)(g) of the Constitution. No restriction has been imposed on the trading activity of dealers in pumpsets in the State of Kerala including northern region comprising eight districts. Even in such an area, a dealer is free to carry on his business. Such dealer, even in the absence of the said circular, cannot claim as a matter of fundamental right guaranteed under Article 19(1)(g) that a farmer or agriculturist must enter into a business deal with such trader in the matter of purchase of pumpsets. Similarly, such trader also cannot claim that the Government should also accept him as an approved dealer of the Government. The trading activity in dealership of pumpsets has not been stopped or even controlled or regulated generally. The dealer can deal with purchasers of pumpsets without any control imposed on him to carry on such business. The obligation to purchase from approved dealer has been fastened only to such farmer or agriculturist who has volunteered to accept financial assistance under the scheme on various terms and conditions.

... ..

36. To ascertain unreasonableness and arbitrariness in the context of Article 14 of the Constitution, it is not necessary to enter upon any exercise for finding out the wisdom in the policy decision of the State Government. It is immaterial whether a better or more comprehensive policy decision could have been taken. It is equally immaterial if it can be

demonstrated that the policy decision is unwise and is likely to defeat the purpose for which such decision has been taken. Unless the policy decision is demonstrably capricious or arbitrary and not informed by any reason whatsoever or it suffers from the vice of discrimination or infringes any statute or provisions of the Constitution, the policy decision cannot be struck down. It should be borne in mind that except for the limited purpose of testing a public policy in the context of illegality and unconstitutionality, courts should avoid “embarking on uncharted ocean of public policy”.

[Emphasis supplied]

13. The 3 Judges Bench of the Apex Court in **DALMIA CEMENT**'s case *supra* elaborately considering interplay between freedom of trade and the Act, clearly holds that the subject Act which was called in question before the Court was not violative of Article 14 of the Constitution of India. The Apex Court was considering whether 100% usage of gunny bags by sugar industry which was then the norm and 70% by the cement industry was reasonable or otherwise. The Apex Court has held that recommendation of 100% usage by the sugar industry by the Advisory Committee constituted under Section 4 of the Act has led to Government acting upon the same. The economic policy to render socio-economic justice to the growers of raw jute and the workmen is based upon the constitutional policy ordained in Part-IV

of the Constitution i.e., the Directive Principles of State Policy. The Apex Court further holds that the Standing Advisory Committee had appropriately advised the Government to take a decision to continue the policy of compulsory packing. The aforesaid observation of the Apex Court was considering the very enactment when the usage of jute bag stood at 100% in the sugar industry and 70% in the cement industry.

14. In **KRISHNAN KAKKANATH**'s case *supra*, the Apex Court holds that right to carry on trade and business are always subject to reasonable restrictions. It would not become arbitrary for the mere say of it by a person who brings the challenge. The Apex Court holds that to ascertain arbitrariness and unreasonableness in the context of Article 14 of the Constitution, it is not necessary to enter upon any exercise of finding the wisdom of the policy. It must be palpable and demonstrable, failing which the Courts would be entering into or embarking upon uncharted ocean of public policy. Therefore, the enactment where the imposition was 100% on sugar industry being affirmed would leave the challenge *qua* 20% in the subject petition to the oblivion.

15. Respective learned senior counsel for the petitioners have relied on certain judgments touching upon the issue.

15.1. The Apex Court in the case of **SIDHARTHA SARAWGI v. BOARD OF TRUSTEES FOR THE PORT OF KOLKATA**³, has held as follows:

“... ..

4. There is a subtle distinction between delegation of legislative powers and delegation of non-legislative/administrative powers. As far as delegation of power to legislate is concerned, the law is well settled: the said power cannot be sub-delegated. The legislature cannot delegate essential legislative functions which consist in the determination or choosing of the legislative policy and formally enacting that policy into a binding rule of conduct [*Harishankar Bagla v. State of M.P.*, AIR 1954 SC 465 at p. 468, para 9: 1954 Cri LJ 1322 : (1955) 1 SCR 380 at p. 388; *Agricultural Market Committee v. Shalimar Chemical Works Ltd.*, (1997) 5 SCC 516 at p. 524, para 24] . Subordinate legislation which is generally in the realm of rules and regulations dealing with the procedure on implementation of plenary legislation is generally a task entrusted to a specified authority. Since the legislature need not spend its time for working out the details on implementation of the law, it has thought it fit to entrust the said task to an agency. That agency cannot entrust such task to its subordinates; it would be a breach of the confidence reposed on the delegate.

5. Regarding delegation of non-legislative/administrative powers on a person or a body to do certain things, whether the delegate himself is to perform such functions or whether after taking decision as per the terms of the delegation, the said agency can authorise the implementation of the same on somebody else, is the question to be considered. Once the power is

³ (2014) 16 SCC 248

conferred, after exercising the said power, how to implement the decision taken in the process, is a matter of procedure. The legislature may, after laying down the legislative policy, confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the framework of that policy [*Khambhalia Municipality v. State of Gujarat*, AIR 1967 SC 1048 at p. 1051, para 7]. So long as the essential function of decision making is performed by the delegate, the burden of performing the ancillary and clerical task need not be shouldered by the primary delegate. It is not necessary that the primary delegate himself should perform the ministerial acts as well. In furtherance of the implementation of the decision already taken by the primary delegate as per the delegation, ministerial or clerical tasks may be performed by authorised officers. The complexity of modernday administration and the expansion of functions of the State to the economic and social spheres have made it necessary that the legislature gives wide powers to various authorities when the situation requires it. Today's governmental functions are a lot more complex and the need for delegation of powers has become more compelling. It cannot be expected that the head of the administrative body performs each and every task himself."

[Emphasis supplied]

The Apex Court elucidates about the legislative policy regarding delegation of non-legislative and administrative powers on a body and holds that today's governmental functions are lot more complex and the need for delegation of powers has become more compelling and every task cannot be expected that the head of the administrative body perform itself. The learned senior counsel have

placed reliance upon the judgment to buttress the submission that once the Standing Advisory Committee recommends, it has to be accepted and the recommendation here is to do away imposition of jute *qua* sugar industry.

15.2. Earlier to the aforesaid order passed by the Apex Court, the High Court of Gujarat in the case of **GUJARAT STATE SUGAR FEDERATION LIMITED v. UNION OF INDIA**⁴, has observed as follows:

"....

14. All the aforesaid views given by different constituents of the committee made a stream of strong view and was culminated as advised by this Statutory constituted Committee. This advice has been brushed aside by the Central Government while issuing impugned notification keeping in mind extraneous factors.

(v) Adverse impact of batching oil used in jute packaging material:

It has been stated in detail by the Jute Commissioner (Annexure "I" to the memo of the petition) that batching oil used in jute packaging material contaminates edible products through contact with packaging material resulting in direct impact upon the health of the persons who are consuming food grains and sugar. In monsoon seasons also, it absorbs moisture and contaminates the edible products packed in jute packaging material. In response to this, it is stated by the learned advocate for the respondent Union of India that recently the Government has restricted 3% usage

⁴ **2006 SCC OnLine Guj 564**

of batching oil in the production of jute packaging material. Therefore, there will not be any contamination. Looking to the facts and circumstances of the present case, I am of the opinion that the jute packaging material contains batching oil and it affects the health of the people at large and it contaminates food grains. For export of the food grains and sugar, jute packaging material is not compulsory, meaning thereby, for the citizens and residents of this country, jute packaging material, though it contaminates food products, 100% of total production is required to be packed in a jute packaging material. This is not in the public interest.

(vi) Scope of judicial review:

It is repeatedly contended by the learned Counsel for the respondent Union of India that the decision taken by the Central Government vide notification dated 24.07.2006 is a policy decision and is a legislative action and as the said decision is a legislative decision in nature, it is not amenable to judicial review. This contention is not accepted by this Court for the reason that the decision taken by the Central Government is not a policy decision but it is a decision taken in pursuance of the parent Act, namely The Jute Packaging Materials (Compulsory use of Packaging Commodities) Act, 1987. It is not even a legislative Act. While taking decision under Sub-section (1) of Section 3 of the Act of 1987, the Central Government must keep in mind the factors required to be considered as per Sections 3 and 4 of the Act of 1987. If the decision taken by the Central Government is dehors the Act of 1987, this Court has all power to check correctness of the decision making process and to check whether the factors referred to in the Act of 1987 have been considered or not. If extraneous factors have been considered while taking the decision under Section 3(1) of the Act of 1987, this Court can judicially review the said decision and can quash the same. It has been decided by the Hon'ble Supreme Court in the case of *Indian Express Newspapers (Bombay) Private Ltd. v. Union of India*, reported in (1985) 1 SCC 641 : AIR 1986 SC 515 and more particularly in Paragraphs 71 and 73 as under:—

"71. We shall assume for purposes of these cases that the power to grant exemption under Section 25 of the Customs Act, 1962 is a legislative power and a notification issued by the Government thereunder amounts to a piece of subordinate legislation. Even then the notification is liable to

be questioned on the ground that it is an unreasonable one. The decision of this Court in *Municipal Corporation of Delhi v. Birla Cotton. Spinning and Weaving Mills, Delhi*, (1968) 3 SCC 251; AIR 1968 SC 1232, has laid down the above principle. In that case Wanchoo, C.J. while upholding certain taxes levied by the Corporation of Delhi under Section 150 of the Delhi Municipal Corporation Act, 1957 observed thus:

“Finally there is another check on the power of the Corporation which is inherent in the matter of exercise of power by subordinate public representative bodies such as Municipal Boards. In such cases if the act of such a body in the exercise of the power conferred on it by the law is unreasonable, the Courts can hold that such exercise is void for unreasonableness. This principle was laid down as far back as 1898 in *Kruse v. Johnson*, 1898 (2) QBD 91.”

73. A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary. In England, the Judges would say “Parliament never intended authority to make such rules. They are unreasonable and ultra vires.” The present position of law bearing on the above point is stated by Diplock L.J. in *Mixnam Properties Ltd. v. Chertsey U.D.C.*, 1964 (1) QB 214 thus:—

“The various grounds upon which subordinate legislation has sometimes been said to be void... can, I think, today be properly regarded as being particularly applications of the general rule that subordinate legislation, to be valid, must be shown to be within the powers conferred by the statute. Thus the kind of unreasonableness which invalidates a bye-law is not the antonym of “reasonableness” in the sense of which that expression is used in the common law, but such manifest arbitrariness, injustice or partiality that a Court would say: Parliament

never intended to give authority to make such rules: they are unreasonable and ultra vires...' If the Courts can declare subordinate legislation to be invalid for 'uncertainty', as distinct from unenforceable...this must be because Parliament is to be presumed not to have intended authorise the subordinate legislative authority to make changes in the existing law which are uncertain...."

(Emphasis supplied)

... ..

"32. It is also contended by the learned Counsel for the respondent Union of India that Standing Advisory Committee's report is merely an advice and is not binding to the Central Government. It is true that the report given by the statutory committee appointed under Section 4 of the Act of 1987 is not binding to the Government, but the question before this Court is whether extraneous factors have been considered by the Central Government for fixing 100% (by brushing aside advice given by SAC) of total production in food grains and sugar industries to be packed in jute packaging material. Looking to the reasons given by the Central Government for brushing aside the advice given by the Standing Advisory Committee, namely their commitment to UPA Government and Jute policy of the year 2005, I am of the opinion that they are extraneous considerations. None of them prescribes 100% usage of Jute packaging material. Looking to the Provisions of Section 3(1) of the Act of 1987, every year is a separate year, therefore, what is just, for last year, on the basis of last year's Jute Policy, cannot be mechanically followed for the current year i.e., 2006-2007, but need of 100% ought to be evaluated independently of last year's percentage or policy. Every year, the whole exercise is to be undertaken afresh, as stated in Section 4 of the Act and thereafter, final decision can be taken under Sub-section (1) of Section 3 of the Act of 1987. Therefore, it is rightly observe in Paragraphs 31 and 32 of the judgment in the case of Dalmiya Cement (Bharat) Ltd. v. Union of India, reported in (1996) 10 SCC 104 as under:—

"31. Equally, the competing right to carry on trade or business guaranteed to a citizen or person is also to be protected. In the clash of competing rights of socio-economic justice of the producers of the agricultural commodities and of the individual right of a citizen to carry

on trade or business, the latter yield place to the paramount social right. However, as rightly pointed out by the Counsel, a balanced view has to be struck by the Central Government in directing use of jute packaging material at the percentage of the jute bags to be used for compulsory packing of the commodities which is subject to parliamentary control and approval. Parliament is the spokesman of the people where the need is felt most acute. When the orders are passed under Section 3 are subject to modification by Parliament, Parliament preserved to itself a great salutary control over executive exercise of power under Section 3(1). It is such a valuable public protection and safeguard kept with Parliament itself. Parliament would be the best judge to discuss in each House as to what extent competing interests of the agricultural industry and the industry involved in commercial products need to be protected and would guide the Central Government appropriately by resolution or otherwise. When Parliament debates on the subject, it focuses its attention on all its constituents and it would be open to debate on the subject by participants from all the members of Parliament and political parties and of shades of opinion. Parliament is entitled to direct the Central Government to place on the floor of each House the necessary factual material for discussion. They are the best judges to direct the Central Government to act on their advice in a particular way, based on the existing factual material. Parliament is empowered to overrule the order of the Central Government under Section 3(1) by disapproval.”

(Emphasis supplied)

Similarly in Para 32 of the said judgment, it has been observed as under:—

“It is a question of fact to be considered in each case as to what percentage is required to be used; it is primarily for the Central Government to decide as executive policy.....”

(Emphasis supplied)

33. Thus, what may be true for one year infixing the percentage of usage of jute bags may not be true for the next year. Every year, this percentage has to be fixed by the Central Government keeping in mind parameters as stated in Sections 3 and 4 of the Act of 1987 and keeping in mind the aforesaid observations in Paragraphs 31 and

32 of the judgment, as stated hereinabove. Wherever, there is a total prohibition, more care and need for strict scrutiny by the Court is required. Looking to the advice given by most of the members of the Standing Advisory Committee and looking to the percentage suggested by the Standing Advisory Committee, namely, 70% and 75% for sugar and food grains, it was a suggestion by most of the departments in Standing Advisory Committee to reduce percentage of usage of jute bags. Looking to the decision taken by the Central Government and note for Cabinet Committee on Economic Affairs dated 26.06.2006 for mandatory use of jute in packing for the jute year 2006-2007, the only reason given in Paragraph 8 is commitment to UPA Government and in continuation of the policy laid down during the last jute year. The report given by the Standing Advisory Committee was brushed aside and 100% of the total production of food grains and sugar was ordered to be packed in jute packaging material. These two factors have been considered which are not at all referred in Sections 3 and 4 of the Act of 1987. Therefore, they are extraneous considerations. Thus, whenever delegated legislation is running against the parent Act, always such decisions are amenable to judicial review and in view of these facts, I hereby quash and set aside the notification dated 24.07.2006 which is at Annexure "A" to the memo of the petition."

[Emphasis supplied]

This is again to buttress the submission that the report given by the Standing Advisory Committee cannot be brushed aside, as it is the duty of the Standing Advisory Committee to look into all aspects and submit its opinion/recommendation. It is a statutory body. Several other judgments are relied on only to buttress the submission with regard to arbitrariness in the directions so issued

right from the judgment in the case of **INDIAN EXPRESS NEWSPAPERS (BOMBAY) (P) LIMITED v. UNION OF INDIA**⁵, up to **COIMBATORE DISTRICT CENTRAL CO-OPERATIVE BANK v. COIMBATORE DISTRICT CENTRAL CO-OPERATIVE BANK EMPLOYEES ASSOCIATION**⁶.

16. There can be no qualm about the principles so laid down by the Apex Court with regard to arbitrariness. The issue is that the very enactment had fallen for consideration before the Apex Court in the case of **DALMIA CEMENT**, a three Judge Bench decision. All the submissions now projected with regard to arbitrariness, infringement of fundamental rights, free trade and all other judgments that the learned senior counsel for the petitioners have sought to place reliance upon, bear consideration in the case of **DALMIA CEMENT**; the law up to date on which the judgment was rendered, barring a few which have come about at a later point in time.

⁵ (1985) 1 SCC 641

⁶(2007) 4 SCC 669

17. The Apex Court in the judgment of **DALMIA CEMENT** at paragraph 21 has held as follows:

"... .."

21. Article 38 of the Constitution enjoins the State to strive to promote the welfare of the people by securing and protecting, as effectively as it may, the social order in which justice — social, economic and political — shall, inform all the institutions of the national life striving to minimise inequalities in income and endeavour to eliminate inequalities in status, facilities, opportunities amongst individuals and groups of people residing in different areas or engaged in different avocations. As stated earlier, agriculture is the mainstay of rural economy and empowerment of the agriculturists. Agriculture, therefore, is an industry. To the tiller of the soil, livelihood depends on the production and return of the agricultural produce and sustained agro-economic growth. The climatic conditions throughout Bharat are not uniform. They vary from tropical to moderate conditions. Tillers of the soil being in unorganised sector, their voice is scarcely heard and was not even remotely voiced in these cases. Their fundamental right to cultivation is as a part of right to livelihood. It is a bastion of economic and social justice envisaged in the Preamble and Article 38 of the Constitution. As stated earlier, the rights, liberties and privileges assured to every citizen are linked with corresponding concepts of duty, public order and morality. Therefore, the jural postulates form the foundation for the functioning of a just society. The fundamental rights ensured in Part III are, therefore, made subject to restrictions i.e., public purpose in Part IV Directives, public interest or public order in the interest of the general public. In enlivening the fundamental rights and the public purpose in the Directives, Parliament is the best Judge to decide what is good for the community, by whose suffrage it comes into existence and the majority political party assumes governance of the country. The Directive Principles are the fundamentals in their manifestos. Any digression is

unconstitutional. The Constitution enjoins upon the Executive, Legislature and the Judiciary to balance the competing and conflicting claims involved in a dispute so as to harmonise the competing claims to establish an egalitarian social order. It is a settled law that the Fundamental Rights and the Directive Principles are the two wheels of the chariot; none of the two is less important than the other. Snap one, the other will lose its efficacy. Together, they constitute the conscience of the Constitution to bring about social revolution under rule of law. The Fundamental Rights and the Directives are, therefore, harmoniously interpreted to make the law a social engineer to provide flesh and blood to the dry bones of law. The Directives would serve the court as a beacon light to interpretation. Fundamental Rights are rightful means to the end, viz., social and economic justice provided in the Directives and the Preamble. The Fundamental Rights and the Directives establish the trinity of equality, liberty and fraternity in an egalitarian social order and prevent exploitation.”

[Emphasis supplied]

The Apex Court observes, striking of a balance and the duty enjoined on the State to strive to promote the welfare of the people by securing and protecting, as effectively as it may, the social order in which justice, social, economic and political are protected. The Apex Court further observes that tillers of the soil being in unorganized sector, their voice is scarcely heard and was not even remotely voiced in these cases. Their fundamental right to cultivation is a part of right to livelihood. It is a bastion of economic and social justice envisaged in the Preamble and Article 38 of the

Constitution. The Apex Court holds that the Fundamental Rights and Directive Principles are two wheels of the chariot; none of the two is less important than the other. You snap one, the other will lose its efficacy. Together, they constitute the conscience of the Constitution to bring about social revolution under rule of law.

18. Though the afore-quoted judgment was rendered in the year 1996, lot has changed today. The farmers may have grown on a higher pedestal, but still remain as voices unheard. The tillers of the soil are still in soil. To the benefit of commercial enterprise, the Standing Advisory Committee has reduced the imposition from 100% to 20% today and the 3 Judge Bench of the Apex Court has held that imposition of 100% itself was not arbitrary. When that is so, it is ununderstandable as to how imposition of 20% becomes arbitrary. The commercial enterprise is wanting to snatch the livelihood of jute growers and jute bag manufacturers *qua* the sugar industry. Therefore, the submissions *sans* countenance.

19. The aforesaid enactment and orders issued from time to time all fall within the realm of policy. The policy, statutory or

otherwise, would not become justiciable in the exercise of jurisdiction of judicial review under Article 226 of the Constitution of India, unless it is arbitrary. The key feature of the statute is to strike a harmony between the Fundamental Rights and Directive Principles of State policy. The progress of the commercial enterprise go hand in hand with the progress of livelihood of jute growing farmers and the jute manufacturing industry, the workmen and the families involved of the said workmen working in the jute industry. Therefore, a cycle of harmony is projected through a statutory policy under the Act. Such a policy is sought to be pointed towards arbitrariness, while it is not, in the light of the preceding analysis of the judgment of the Apex Court.

20. The provisions of the Act, which revolve round the realm of statutory policy, cannot be seen to be interfered with by this Court, in exercise of jurisdiction under Article 226 of the Constitution of India. It cannot be forgotten that the policy is only a course of action to deal with a subject matter. An Authority, statutory or otherwise, is entitled to choose a course of action that it thinks necessary or expedient in public interest. The domain of

administration and scope of judicial review is circumscribed and limited in reviewing policy decisions. The constitutional Courts would be loathe and show deference to the wisdom of the policy makers. The Courts have always exercised judicial restraint and circumspection over the wisdom of the policy of Government or statutory authorities, save as in circumstances, where such policy demonstrates caprice, arbitrariness, unreasonableness or is whimsical, so as to offend the tenets of Article 14 of the Constitution of India. This is the only parameter that would permit constitutional Courts to tinker with the policy.

21. In the above circumstances, it becomes germane to notice what Frankfurter, J., of the U.S. Supreme Court, has in his dissenting opinion in the case of **TROP v. DULLES**⁷ observed. The learned Judge observed as follows:

“....

57. “.....All power is, in Madison's phrase, “of an encroaching nature”. Judicial Power is not immune against this human weakness. It also must be on guard against encroaching beyond its proper bounds, and not the less so since the only restraint upon it is self-restraint.....

⁷1958 SCC ONLINE US SC 62

58. Rigorous observance of the difference between limits of power and wide exercise of power - between questions of authority and questions of prudence - requires the most alert appreciation of this decisive but subtle relationship of two concepts that too easily coalesce. No less does it require a disciplined will to adhere to the difference. It is not easy to stand aloof and allow want of wisdom to prevail to disregard one's own strongly held view of what is wise in the conduct of affairs. But it is not the business of this Court to pronounce policy. **It must observe a fastidious regard for limitations on its own power, and this precludes the Court's giving effect to its own notions of what is wise or politic. That self-restraint is of the essence in the observance of the judicial oath, for the Constitution has not authorized the judges to sit in judgment on the wisdom of what Congress and the executive Branch do".**

(Emphasis supplied)

22. In yet another view Lord Justice Lawton in the case of **LAKER AIRWAYS v. DEPARTMENT OF TRADE**⁸, has held as follows:

"In the United Kingdom aviation policy is determined by ministers within the legal framework set out by Parliament. Judges have nothing to do with either policy-making or the carrying out of policy. **Their function is to decide whether a minister has acted within the powers given to him by statute or the common law. If he is declared by a Court, after due process of law, to have acted outside his powers, he must stop doing what he has done until such time as parliament gives him the powers he wants. In a case such as this I regard myself, as a referee. I can blow my judicial whistle when the ball goes out of play; but**

⁸(1977) 2 ALL ER 182

when the game restarts I must neither take part in it nor tell the players how to play”.

(Emphasis supplied)

The afore-quoted observations of those learned Judges have been reiterated in plethora of judgments by the Apex Court.

23. In terms of what is laid down hereinabove, what would unmistakably emerge is, **for a Judge in terms of his inputs, cannot assume the role of a supreme adviser to the administration of policies governing innumerable activities of the State, particularly in today’s context of over-expanding horizons, which come into the ken of such policy making. By taking oath of office as a Judge, an ordinary man turns himself into a man with magic wand and qualifies himself to be an unquestionable Authority to advice on policies is inconceivable. It is further trite that the Court would not sit in the arm chair of those experts who have promulgated such policies and overrule them, save as in circumstances, as narrated hereinabove.** In the case at hand, no such circumstances are brought to the notice of this Court by the

petitioners for the policy to be branded as arbitrary, whimsical, unreasonable and contrary, to any statutory provisions resulting in illegality. All that the petitioner contends is that its right under Article 19(1)(g) of the Constitution of India is taken away. Article 19(1)(g) of the Constitution which gives right to a citizen to practice any profession or to carry on any trade or business cannot be construed to be so absolute, as even the fundamental rights are couched with reasonable restrictions.

24. The parameters of judicial review of policy decisions of the State can be interfered with only on certain grounds.

24.1. The Apex Court in the case **UGAR SUGAR WORKS LIMITED v. DELHI ADMINISTRATION**⁹, has held as follows:

“..... ..”

18. The challenge, thus, in effect, is to the executive policy regulating trade in liquor in Delhi. **It is well settled that the courts, in exercise of their power of judicial review, do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc. Indeed, arbitrariness, irrationality, perversity and mala fide will render the policy unconstitutional. However, if the policy cannot be faulted on any of these**

⁹ (2001) 3 SCC 635

grounds, the mere fact that it would hurt business interests of a party, does not justify invalidating the policy. In tax and economic regulation cases, there are good reasons for judicial restraint, if not judicial deference, to judgment of the executive. The courts are not expected to express their opinion as to whether at a particular point of time or in a particular situation any such policy should have been adopted or not. It is best left to the discretion of the State.”

[Emphasis supplied]

24.2. Later, the Apex Court in the case of **CENTRE FOR PUBLIC INTEREST LITIGATION v. UNION OF INDIA**¹⁰, has held as follows:

“... ..

21. Such a policy decision, when not found to be arbitrary or based on irrelevant considerations or mala fide or against any statutory provisions, does not call for any interference by the courts in exercise of power of judicial review. This principle of law is ingrained in stone which is stated and restated time and again by this Court on numerous occasions. In *Jal Mahal Resorts (P) Ltd. v. K.P. Sharma* [*Jal Mahal Resorts (P) Ltd. v. K.P. Sharma*, (2014) 8 SCC 804], the Court underlined the principle in the following manner: (SCC pp. 861-62, paras 137-38)

“137. From this, it is clear that although the courts are expected very often to enter into the technical and administrative aspects of the matter, it has its own limitations and in consonance with the theory and principle of separation of powers, reliance at least to some extent to the decisions of the State authorities, specially if it is based on the opinion of the experts reflected from the project report prepared by the technocrats, accepted by the entire hierarchy of the State administration, acknowledged,

¹⁰ (2016) 6 SCC 408

accepted and approved by one Government after the other, will have to be given due credence and weightage. In spite of this if the court chooses to overrule the correctness of such administrative decision and merits of the view of the entire body including the administrative, technical and financial experts by taking note of hair splitting submissions at the instance of a PIL petitioner without any evidence in support thereof, the PIL petitioners shall have to be put to strict proof and cannot be allowed to function as an extraordinary and extra-judicial ombudsman questioning the entire exercise undertaken by an extensive body which includes administrators, technocrats and financial experts. In our considered view, this might lead to a friction if not collision among the three organs of the State and would affect the principle of governance ingrained in the theory of separation of powers. In fact, this Court in *M.P. Oil Extraction v. State of M.P.* [*M.P. Oil Extraction v. State of M.P.*, (1997) 7 SCC 592] , at p. 611 has unequivocally observed that : (SCC para 41)

'41. ... The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of judiciary in outstepping its limit by unwarranted judicial activism being very often talked of in these days. The democratic set-up to which the polity is so deeply committed cannot function properly unless each of the three organs appreciate the need for mutual respect and supremacy in their respective fields.'

138. However, we hasten to add and do not wish to be misunderstood so as to infer that howsoever gross or abusive may be an administrative action or a decision which is writ large on a particular activity at the instance of the State or any other authority connected with it, the Court should remain a passive, inactive and a silent spectator. What is sought to be emphasised is that there has to be a boundary line or the proverbial "Laxman rekha" while examining the correctness of an administrative decision taken by the State or a Central authority after due deliberation and diligence which do not reflect arbitrariness or illegality in its decision and execution. If such equilibrium in the matter of governance gets disturbed, development is bound to be slowed down and disturbed specially in an age of economic liberalisation wherein global players are also involved as per policy decision."

22. Minimal interference is called for by the courts, in exercise of judicial review of a government policy when the said policy is the outcome of deliberations of the technical experts in the fields inasmuch as courts are not well equipped to fathom into such domain which is left to the discretion of the execution. It was beautifully explained by the Court in *Narmada BachaoAndolan v. Union of India* [*Narmada BachaoAndolan v. Union of India*, (2000) 10 SCC 664] and reiterated in *Federation of Railway Officers Assn. v. Union of India* [*Federation of Railway Officers Assn. v. Union of India*, (2003) 4 SCC 289] in the following: (SCC p. 289, para 12)

"12. In examining a question of this nature where a policy is evolved by the Government judicial review thereof is limited. When policy according to which or the purpose for which discretion is to be exercised is clearly expressed in the statute, it cannot be said to be an unrestricted discretion. On matters affecting policy and requiring technical expertise the court would leave the matter for decision of those who are qualified to address the issues. Unless the policy or action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of power, the court will not interfere with such matters."

23. Limits of the judicial review were again reiterated, pointing out the same position by the courts in England, in *G. Sundarrajan v. Union of India* [*G. Sundarrajan v. Union of India*, (2013) 6 SCC 620] in the following manner: (SCC p. 646, para 15)

"15.1. Lord MacNaughten in *Vacher & Sons Ltd. v. London Society of Compositors* [*Vacher & Sons Ltd. v. London Society of Compositors*, 1913 AC 107 : (1911-13) All ER Rep 241 (HL)] has stated : (AC p. 118)

'... Some people may think the policy of the Act unwise and even dangerous to the community. ... But a judicial tribunal has nothing to do with the policy of any Act which it may be called upon to interpret. That may be a matter for private judgment. The duty of the court, and its only duty, is to expound the language of the Act in accordance with the settled rules of construction.'

15.2. In *Council of Civil Service Unions v. Minister for the Civil Service* [*Council of Civil Service Unions v. Minister for the Civil Service*, 1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] (AC p. 414 : All ER p. 954), it was held that *it is not for the courts to determine whether a particular policy or particular decision taken in fulfilment of that policy is fair. They are concerned only with the manner in which those decisions have been taken, if that manner is unfair, the decision will be tainted with what Lord Diplock labels as "procedural impropriety"*.

15.3. This Court in *M.P. Oil Extraction v. State of M.P.* [*M.P. Oil Extraction v. State of M.P.*, (1997) 7 SCC 592] held that unless the policy framed is absolutely capricious, unreasonable and arbitrary and based on mere ipse dixit of the executive authority or is invalid in constitutional or statutory mandate, court's interference is not called for.

15.4. Reference may also be made of the judgments of this Court in *Ugar Sugar Works Ltd. v. Delhi Admn.* [*Ugar Sugar Works Ltd. v. Delhi Admn.*, (2001) 3 SCC 635], *Dhampur Sugar (Kashipur) Ltd. v. State of Uttaranchal* [*Dhampur Sugar (Kashipur) Ltd. v. State of Uttaranchal*, (2007) 8 SCC 418] and *Delhi Bar Assn. v. Union of India* [*Delhi Bar Assn. v. Union of India*, (2008) 13 SCC 628] .

15.5. We are, therefore, firmly of the opinion that we cannot sit in judgment over the decision taken by the Government of India, NPCIL, etc. for setting up of KKNPP at Kudankulam in view of the Indo-Russian Agreement."
(emphasis in original)

24. When it comes to the judicial review of economic policy, the courts are more conservative as such economic policies are generally formulated by experts. Way back in the year 1978, a Bench of seven Judges of this Court in *Prag Ice & Oil Mills v. Union of India* [*Prag Ice & Oil Mills v. Union of India*, (1978) 3 SCC 459 : AIR 1978 SC 1296 : 1978 Cri LJ 1281] carved out this principle in the following terms : (SCC p. 478, para 24)

"24. We have listened to long arguments directed at showing us that producers and sellers of oil in various parts of the country will suffer so that they would give up producing or dealing in mustard oil. It was urged that this

would, quite naturally, have its repercussions on consumers for whom mustard oil will become even more scarce than ever ultimately. We do not think that it is the function of this Court or of any court to sit in judgment over such matters of economic policy as must necessarily be left to the government of the day to decide. Many of them, as a measure of price fixation must necessarily be, are matters of prediction of ultimate results on which even experts can seriously err and doubtlessly differ. Courts can certainly not be expected to decide them without even the aid of experts."

25. Taking aid from the aforesaid observations of the Constitution Bench, the Court reiterated the words of caution in *Peerless General Finance and Investment Co. Ltd. v. RBI* [*Peerless General Finance and Investment Co. Ltd. v. RBI*, (1992) 2 SCC 343] with the following utterance : (SCC p. 375, para 31)

"31. The function of the Court is to see that lawful authority is not abused but not to appropriate to itself the task entrusted to that authority. It is well settled that a public body invested with statutory powers must take care not to exceed or abuse its power. It must keep within the limits of the authority committed to it. It must act in good faith and it must act reasonably. Courts are not to interfere with economic policy which is the function of experts. It is not the function of the courts to sit in judgment over matters of economic policy and it must necessarily be left to the expert bodies. In such matters even experts can seriously and doubtlessly differ. Courts cannot be expected to decide them without even the aid of experts."

26. It cannot be doubted that the primary and central purpose of judicial review of the administrative action is to promote good administration. It is to ensure that administrative bodies act efficiently and honestly to promote the public good. They should operate in a fair, transparent, and unbiased fashion, keeping in forefront the public interest. To ensure that the aforesaid dominant objectives are achieved, this Court has added new dimension to the contours of judicial review and it has undergone tremendous change in recent years. The scope of judicial review has expanded radically and it now extends well beyond the sphere of statutory powers to

include diverse forms of “public” power in response to the changing architecture of the Government [[See : *Administrative Law : Text and Materials* (4th Edn., Oxford University Press, New York, 2011) by Beatson, Matthews, and Elliott.]] . Thus, not only has judicial review grown wider in scope; its intensity has also increased. Notwithstanding the same,

“it is, however, central to received perceptions of judicial review that courts may not interfere with exercise of discretion merely because they disagree with the decision or action in question; instead, courts intervene only if some specific fault can be established—for example, if the decision reached was procedurally unfair [*Ibid.*]”.

27. The *raison d'être* of discretionary power is that it promotes the decision-maker to respond appropriately to the demands of a particular situation. When the decision-making is policy-based, judicial approach to interfere with such decision-making becomes narrower. In such cases, in the first instance, it is to be examined as to whether the policy in question is contrary to any statutory provisions or is discriminatory/arbitrary or based on irrelevant considerations. If the particular policy satisfies these parameters and is held to be valid, then the only question to be examined is as to whether the decision in question is in conformity with the said policy.”

[Emphasis supplied]

On a blend of the judgments rendered by the Apex Court, the contention that, imposition of 20% of sugar to be bagged in jute bags under the Act, does not in any way become arbitrary. The percentage so projected is to harmonize all the sectors in the industry. It is economic policy and a policy that would not entail judicial review under Article 226 of the Constitution of India.

Therefore, in the considered view of this Court, the challenge mounted by the petitioners does not withstand scrutiny. The statute under which the impugned notifications are issued has already weathered constitutional assault before the Apex Court. Once the compulsion of 100% packaging upon the sugar industry has been upheld by the Apex Court, the present grievance against a mere 20% reservation can scarcely aspire higher favour. The issue is answered accordingly.

Issue No.2:

- (ii) Whether the projection of presence of carcinogenic material in jute batching oil, has such authenticity, for this Court to so consider and direct stoppage of its usage? and**

25. The petitioners have endeavoured to clothe their case in the garb of health concerns and economic hardship, yet upon careful examination, does not throw sufficient light of evidence to give them form. This Court, cannot be swayed by apprehensions

untethered to empirical proof nor can they supply legislative wisdom with judicial preference in matters of economic policy. The petitioners have for the first time projected before this Court regarding the alleged carcinogenic effect of jute batching oil. Certain reports are placed before the Court to buttress the submission that jute batching oil is carcinogenic and has chances of causing cancer. A study report of certain journals is placed on record in support thereof. In furtherance of the said fear of carcinogenic material, certain legislations are in place in the respective States, where the usage is restricted to 3% of batching oil in jute bags. This Court would not now paraphrase all the reports in the case at hand, for the reason that the said objection or the said projection of jute batching oil causing carcinoma is for the first time projected before this Court.

26. The Standing Advisory Committee, in terms of Section 4 of the Act, is required to meet on an annual basis and recommend percentage of usage of jute bag in every industry including sugar industry. It is, therefore, for the Standing Advisory Committee to consider all these reports, analyse with the help of experts as to

whether jute batching oil, to the tune of the percentage that it is directed to be used or permitted to be used, is carcinogenic and if it does cause harm in real time, there would be a decision accordingly in the interest of general public, as sugar is largely consumed by every citizen. If it is only projected as a commercial in viability, a decision in that regard also could be taken. These reports are to be examined by the experts and the Court is not an expert to examine these reports. I only deem it appropriate to observe that these reports be placed before the Standing Advisory Committee while a decision is being taken for the ensuing year.

27. It is not today that jute batching oil is being used for production of jute bags. The jute batching oil, after its usage, is again covered by another thin layer to block perforation and pilferage of sugar or dropping out of sugar causing moisture of sugar owing to its hygroscopic nature. Since this has been in usage, all of which can be analysed for the ensuing year by the Standing Advisory Committee. This Court would hold its hands in declaration that it is carcinogenic, without the report at the outset, being placed before the Standing Advisory Committee. This Court holds

that imposition of 20% of jute bags in the sugar industry is neither arbitrary nor unreasonable. It is in the realm of statutory policy, a policy in place to harmonize the fundamental rights with Directive Principles of State Policy.

28. Since the Standing Advisory Committee is to meet to draw a policy for the ensuing year through its recommendations/opinion, the Standing Advisory Committee shall also take note of the reports placed before this Court, with regard to alleged health hazards of jute batching oil. The petitioners shall place these materials before the Committee, while the Committee sits to decide the ensuing policy. This Court has no reason to disbelieve that the Committee would not look into the reports, its impact upon the citizens. The issue is accordingly answered.

Issue No.3:

(iii) Whether shortage of jute supply has crippled the mandate of the Act?

29. The learned senior counsels representing the petitioners have projected certain reports with regard to acute shortage of jute production on the soil of this nation and had to import jute from Bangladesh for the compliance with the rigor of the Act. In effect, the counsels would project impossibility of compliance due to such shortage in production. The learned Additional Solicitor General of India Sri K. Arvind Kamath has taken this Court through the subsequent reports, to demonstrate that it was only in a particular year, the supply of jute was in scarcity. To the subsequent years and today, the supply is in surplus. It is his submission that let not the commercial enterprises worry about the supply of jute or it being imported from Bangladesh, it is only that they must follow the mandate of the notifications issued, in furtherance of the Act.

30. A perusal at the documents appended to the statement of objections of the 3rd respondent or documents produced before this Court along with the memo would so indicate and vindicate the submission of the learned Additional Solicitor General of India and that of the 3rd respondent that supply of jute was in short only for a particular year. Even otherwise, this Court again, would not step

into the shoes of the Government of India, act as a trader of jute and consider the supply being short or in surplus. These are matters in the realm of administration and for the administrators to steer clear the shortage of jute, if any, in any particular year. The reasons so rendered while answering issue No.1, insofar as judicial review of policies and of administrative action can be permissible, only if it is arbitrary, arbitrariness being palpable and demonstrable nor imagined. It is understandable as to how the shortage of jute be projected by the commercial enterprises to decline compliance with the mandate of the statute. However, it is for the Committee in terms of Section 4 of the Act, to consider the entire spectrum and draw up a notification as is done annually. Again this Court does not doubt that the Committee will not look into this aspect as well. Therefore, I decline to accept the submission of the learned senior counsels for the petitioners that jute is so much in short supply that they cannot comply with the mandate of the notifications. The issue is thus answered.

31. Therefore, all the submissions made by the learned Additional Solicitor Additional Solicitor General of India

Sri. K. Arvind Kamath are overwhelming to the submissions made in unison by the respective learned senior Counsels appearing for the petitioners. The armoury, as well, from the arsenal of the learned ASGI are again overpowering and applicable to the facts obtaining in the case at hand, over the ones that have fallen from the repository of the learned senior Counsel appearing for the petitioners.

32. For the aforesaid reasons, the petition being devoid of merit stands ***rejected***.

Consequently, pending applications if any, also stand disposed.

**Sd/-
(M.NAGAPRASANNA)
JUDGE**

Bkp
CT:MJ