

Vijay Singh Rao v. State of Haryana and another (D. V. Sehgal, J.)

(9) In a recent judgement rendered in *H. V. Pardasanie te vs. Union of India and others* (1), Ranganath Misra, J. speaking for the Supreme Court observed as follows :—

“There is no dispute that in the absence of any special provision regulating determination of seniority, length of continuous service in any particular grade would be the basis for determining the seniority in that grade.”

Following the aforesaid dictum, it has to be held that the seniority had to be fixed on the basis of continuous length of service and not on the basis of the proportion in which recruitment could be made from three sources on rota system in the absence of any service rules or government instructions.

(10) For the reason recorded above, C.W.P. No. 2894 of 1983 is allowed and the seniority list Annexure P13 issued by the State Government in the year 1984 during the pendency of this writ petition, is hereby quashed and a direction is issued to frame new seniority list solely on the basis of continuous length of service. CWP Nos. 1459 of 1977 and 537 of 1980 also stand disposed of in the aforesaid terms. However, the parties are left to bear their own costs.

N. K. S.

Before D. V. Sehgal, J.

VIJAY SINGH RAO,—Petitioner.

versus

STATE OF HARYANA and another,—Respondents.

Civil Writ Petition No. 4461 of 1985

January 9, 1986.

Punjab Civil Service Rules, Volume I—Rule 10.2(a) proviso—Haryana Co-operative Societies Act, 1984—Sections 20, 25 and 31—Bye-laws of the Haryana State Co-operative Supply and Marketing Federation—Bye-laws 6, 14, 16, 18, 19, 21, 24, 26, 29, 34 and 35—Government employee transferred to Haryana State Co-operative Supply and Marketing Federation (HAFED) against his will—Transfer

(1) 1985 (2) S.L.R. 43.

sought to be justified in terms of proviso to Rule 10.2(a)—Hafed—Whether can be said to be a body wholly or substantially owned or controlled by the government—Transfer of such government employee—Whether valid.

Held, that a reading of sections 20, 25 and 31 of the Haryana Co-operative Societies Act, 1984 as also bye-laws 6, 14, 16, 18, 19, 21, 24, 26, 29, 34 and 35 of the Haryana State Co-operative Supply and Marketing Federation leaves no doubt that the HAFED is a Co-operative Society in its true sense. It is further clear from the aforesaid provisions that the said Co-operative Society is independent in its constitution and is neither wholly nor substantially owned or controlled by the government. The mere fact that its Managing Director is a member of the Indian Administrative Service or of the Haryana Civil Service and is appointed by the Government or that the Registrar of Co-operative Societies has certain powers regulating its functioning, does not give deep and pervasive control over HAFED to the government. It is, therefore, logical to conclude that proviso to rule 10.2(a) of the Punjab Civil Service Rules is not attracted and the principal provision thereof to the effect that no Government employee may be transferred to foreign service against his will would be attracted in the present case. As such the transfer of such government employee is violative of the said rule and is, therefore, not valid.

(Para 8)

Writ petition under article 226/227 of the Constitution of India praying that :—

- (i) *writ petition may be accepted and order dated 3rd August, 1985 annexure P-4 and order dated 9th September, 1985 annexure P-7 may be quashed ;*
- (ii) *any other appropriate writ order or direction, which this Hon'ble Court may deem fit in the circumstances of the case quashing the impugned orders annexure P-4 and P-7 be also issued ;*
- (iii) *condition of issuing advance notice to the respondents may be dispensed with in view of urgency of the matter ;*
- (iv) *Operation of impugned orders annexures P-4 and P-7 may kindly be stayed till the decision of the present writ petition.*
- (v) *costs of the petition may also kindly be awarded to the petitioner.*

Roop Chand, Advocate and B. S. Khoji, Advocate, for the Petitioner.

B. R. Premi, Advocate, for A. G. Haryana, for the Respondents.

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JUDGMENT

D. V. Sehgal, J.

(1) The petitioner claims himself to be the senior-most Additional Registrar in the Co-operative Department, Haryana. He was sent on deputation to the Government of India as Private Secretary to the Union Minister of Agriculture, New Delhi, in the year 1981. *Vide* letter dated 2nd February, 1984 (Annexure P.1), he was selected to the post of Zonal Manager to work on deputation with the Indian Farmers Fertilizers Co-operative Limited (hereinafter referred to as 'the IFFCO') for a period of 2 years. *Vide* order dated 18th April, 1984 (Annexure P.2), he was recalled from deputation from the Government of India and was placed on deputation with the IFFCO for appointment as Zonal Manager (North) at Chandigarh. *Vide* order dated 27th April, 1985 (Annexure P.3), the State of Haryana, respondent No. 1, recalled him from the IFFCO and posted him as Chief Auditor, Co-operative Societies, Haryana, Chandigarh, against a leave vacancy, on which post he is working at present. Again,—*vide* order dated 3rd August, 1985 (Annexure P.4), he has been posted on deputation as Additional Managing Director with the Haryana State Co-operative Supply and Marketing Federation Limited, Chandigarh (hereinafter referred to as 'the HAFED'). He submitted an application dated 12th August, 1985 (Annexure P.5) to respondent No. 1, representing against his being sent on deputation to the HAFED. He relied on the instructions of the Finance Department, dated 11th May, 1977, extracted in Annexure P.6, and contended that, on return from the earlier deputation, he has not yet completed two years in the parent Department and, therefore, could not be sent on deputation. He further contended that he could not be sent on deputation against his will. However,—*vide* order dated 9th September, 1985 (Annexure P.7), he was directed to relinquish the charge of the post of Chief Auditor and assume charge of the post of Additional Managing Director with the HAFED in compliance with the order dated 3rd August, 1985 (Annexure P.4). Aggrieved by the orders, Annexures P.4 and P.7, he has filed the present writ petition challenging the aforesaid orders, more or less, on the basis of the contention which he raised in his application Annexure P.5.

(2) The writ petition came up for motion hearing on 12th September, 1985 before a Division Bench. While issuing notice of

motion, operation of the impugned order Annexure P.4, to the extent it affected the petitioner, was stayed.

(3) Written statement has been filed on behalf of respondents Nos. 1 and 2. In defence, it is contended that the instructions of the Finance Department (Annexure P.6) are administrative in nature. It is further asserted that the HAFED is an incorporated body which is wholly or substantially owned or controlled by the Government. Therefore in view of the proviso to rule 10.2(a) of the Punjab Civil Services Rules, Volume I (hereinafter referred to as 'the Rules'), the petitioner could be sent on deputation to HAFED as Additional Managing Director even against his will.

(4) In my view, the instructions of the Finance Department (Annexure P.6) being administrative in nature, have no legal and binding force and, as such, the petitioner cannot take support from the same. It is, however, necessary to delve upon the second contention with a little elaboration. Rule 10.2 (a) (with proviso thereto of the Rules is as under:—

“No Government employee may be transferred to foreign service against his will :

Provided that this sub-rule shall not apply to the transfer of a Government employee to the service of a body, incorporated or not, which is wholly or substantially owned or controlled by the Government.”

(5) The learned counsel for the petitioner has seriously disputed the assertion of respondents Nos. 1 and 2 that the HAFED is wholly or substantially owned or controlled by respondent No.1. According to him, HAFED is a Co-operative Society governed by the provisions of the Haryana Co-operative Societies Act, 1984 (hereinafter referred to as 'the Act'), it has its General Body constituted of its members; it, no doubt, has an Executive Committee and a Board of Directors to carry out its business and, by no stretch of imagination, can it be said that it is wholly or substantially owned or controlled by respondent No. 1. To appreciate this contention, it is necessary to refer to the bye-laws of the HAFED and some of the provisions of the Act. Bye-laws 6, 14, 16, 18, 19, 21, 24, 26, 29, 34 and 35 relevant

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in **this** regard and are reproduced hereunder:—

“III. MEMBERSHIP

6. The membership of the Federation shall be open to:
- (a) District Wholesale Co-operative Supply and Marketing Societies.
 - (b) Co-operative Marketing and Marketing-cum-Processing Societies;
 - (c) Co-operative Cold Storages;
 - (d) Co-operative Supply Societies;
 - (e) Such other type of societies as may be approved by the Registrar; and
 - (f) Government.

(G) NOMINAL MEMBERS :

- (i) The Federation may enrol Primary Agricultural Credit-cum-Service Societies (Mini Banks) and other institutions, with which it has business connections, as nominal members of the Federation.
- (ii) The nominal members shall not be entitled to any share in any form whatsoever in the assets or profits of the Federation.
- (iii) The nominal members shall have no representation on the management of the Federation.
- (iv) Nominal members shall pay entrance fee of Rs. 5 and shall not be required to contribute any share capital.

V. FUNDS

14. Federation may raise funds by:—

- (a) issuing of shares of the value of Rs. 500 each;

- (b) raising of loans from Government, Co-operative Banks and with the previous approval of the Registrar, from the Commercial Banks and others;
- (c) acceptance of deposits from members and non-members;
- (d) acceptance of grant or subsidy or financial assistance from the Government or other institutions or individuals.

VII. MANAGEMENT

16. The affairs of the Federation shall vest in Board of Directors, which shall be constituted as follows:—

- (i) The Registrar, Co-operative Societies, Haryana, or his nominee;
- (ii) The Director of Agriculture or his nominee;
- (iii) The Director of Food and Supplies or his nominee;
- (iv) The Managing Director of the Federation;
- (v) A nominee of the Apex Co-operative Bank;
- (vi) One representative for every ten member societies or part thereof subject to minimum representation of one member for each district irrespective of the number of societies in the district.
- (vii) Any other member nominated by the Registrar Co-operative Societies, Haryana in accordance with the provisions of the Co-operative Societies Act, as amended up-to-date.

18. The President and the Vice-President of the Board of Directors shall be elected from amongst members of the Board annually, provided that the President and the Vice-President nominated under by-law 17 by the Registrar, Co-operative Societies shall hold office for a period to be specified by the Registrar, Co-operative Societies. Provided further that such period shall not exceed three years.

19. A Director, who is a member of an affiliated society, shall cease to be a member of the Board of Directors if the membership of the society concerned is terminated.

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21. The Board of Directors shall meet at least once in six months. At least fifteen days' notice of the meeting shall be given to the Directors before the meeting is held. One-third of the total members shall form quorum for meeting of the Board. The President or, in his absence, Vice-President, and if both are absent, a member elected by those present in the meeting shall preside over the meeting of the Board. Each member shall have one vote. Unless otherwise provided in these bye-laws or by the statutory rules notified by the Government, all questions shall be decided by a majority of votes. In case of equality of votes, the President of the meeting shall have a casting vote.

Any seven members of the Board of Directors may requisition a special meeting of the Board of Directors by giving seven days' notice to the Managing Director of the Federation. On the receipt of the requisition, the Managing Director shall convene a meeting of the Board of Directors at the Headquarters of the Federation. If he fails to do so within 30 days, the Registrar on the application of the signatories of the requisition may summon a meeting of the Board of Directors. The Registrar and/or President may on his own motion at any time summon a meeting of the Board of Directors.

24. There shall be an Executive Committee of the Federation consisting of seven Directors constituted in the following manner:—

- (a) President of the Board of Directors;
- (b) Vice-President of the Board of Directors;
- (c) Registrar, Co-operative Societies, Haryana, or his nominee;
- (d) Managing Director of the Federation;
- (e) Three Directors to be appointed by the Board of Directors out of its remaining members.

Three members shall form quorum of the Executive Committee and at least seven days' notice shall be given for such a meeting. In case of emergency an item can be got sanctioned from the Executive Committee through circulation and the same shall be placed before the next Executive Committee meeting for its confirmation.

26. The Managing Director of the Federation shall be appointed by the State Government.

- (i) The Federation will create a common cadre for its employees in such manner as may be provided in the rules governing the common cadre. The services of the incumbents on the cadre may be lent on deputation to Co-operative Marketing Societies or any other societies such as and in the manner provided in the said rules.
- (ii) The Common Cadre Rules shall be governed by the service rules as may be framed, amended or modified by the Board of Directors of the Society from time to time with the prior approval of the Registrar.

VIII. GENERAL BODY :

29. The General Body of members of the Federation shall meet from time to time and at least once a year. A meeting of the general body shall be convened by the Managing Director of the Federation under the direction of the Board of Directors. A general meeting shall also be convened if the requisition for such meeting signed by not less than one-fourth of the total members, is received by the Board of Directors. If on the receipt of the requisition the Board of Director fails within a reasonable time, not exceeding 30 days to convene the general meeting, the signatories to the requisition may refer the matter to the Registrar who may, if he thinks fit, summon the general meeting. The Registrar may on his own motion, at any time, summon a General Meeting of the Federation. Every society will be represented by one person duly authorised by the member society and the person concerned will deposit the instrument so appointing him before the General Meeting.

34. Without prejudice to the general provisions of the preceding bye-laws, the General Body of members shall have the following powers and duties:—

- (i) Removal of the members of the Board of Directors;
- (ii) Consideration of the annual report, the audited statement of receipts and disbursement, balance-sheet and profit and loss account;
- (iii) Disposal of profit;

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- (iv) Fixation of the maximum borrowing limit of the Federation consistent with these bye-laws, subject to the approval of Registrar;
- (v) Amalgamation of other similar co-operative institutions with the Federation;
- (vi) Transaction of any business with the permission of Chairman of the General Meeting.
- (vii) Amendment of bye-laws.

35. No resolution of the General Body removing the Board of Directors or any Directors, shall be valid unless it is carried by majority at a General Meeting, or meeting of the constituency as the case may be, at which not less than two-third of total number of members are present.

(6) Now, it would be of benefit to refer to sections 20, 25 and 31 of the Act:—

“20. *Vote of Members.*—Every member of a co-operative society shall have one vote in affairs of the society :

Provided that :

- (a) in the case of equality of votes, the chairman shall have a second or casting vote;
- (b) an associate member shall not have the right of vote;
- (c) where the Government is a member of the co-operative society, each person nominated by the Government on the committee shall have one vote;
- (d) a member in default of any sum due from him to the society shall not be eligible to exercise his right of vote.

EXPLANATION.—For the purpose of this clause, the expression, member does not include a society.

- (e) a society brought under the process of winding up or in liquidation shall not be eligible to exercise its right of vote.

25. (1) *Final Authority and its Meetings.*—The final authority in a co-operative society shall vest in the general body of members: Provided that where the bye-laws of a co-operative society provide for the constitution of smaller body consisting of delegates of members of the society elected or selected in accordance with such bye-laws, the smaller body shall exercise such power of general body as may be prescribed or as may be specified in the bye-laws of the society.

(2) Notwithstanding anything contained in section 21, each delegate shall have one vote in the affairs of the society.

(3) A general meeting of Co-operative Society shall be held once in a year for the purpose of—

(a) approval of the programme of the activities of the society prepared by the committee for the ensuing year ;

(b) consideration of the audit report and the annual report ;
or

(c) consideration of any other matter which may be brought forward in accordance with the bye-laws.

31. (1) *Appointment Powers, Functions of Managing Director.*—Where the Government has subscribed to the share capital of a co-operative society to the extent of ten lakh rupees or more, the Government may, notwithstanding anything contained in the bye-laws of the society, nominate another member in addition to those nominated under section 29 and appoint him as Managing Director :

Provided that no person shall be appointed as Managing Director of a co-operative society unless he is a member of the Indian Administrative Service or Haryana Civil Service (Executive Branch) or Class I or II Officer of the Co-operative Department, Haryana, except in the case of the Haryana State Co-operative Labour and Construction Federation Limited, the Haryana Housing Apex Finance Society Limited and the Haryana Co-operative Dairy Development Federation Limited, where, technical persons may be appointed as Managing Directors.

(2) The Managing Director appointed under sub-section (1) shall exercise such powers as are assigned to him under

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the bye-laws or delegated to him by the committee. He shall also discharge all such functions, consistent with the bye-laws as are assigned to him by the Government or the Registrar. He shall work under the superintendence and control of the committee.

- (3) The Managing Director of a Co-operative society shall be its principal executive officer. All employees of the society shall function and perform their duties under his superintendence and control.

(7) The above-quoted provisions make it clear that the membership of the HAFED is open to six categories of organizations and one of them is the Government. Likewise, its funds are constituted of shares of the value of Rs. 500 each, loans from Government, Co-operative Banks and Commercial Banks and others, deposits from members and non-members and grant or subsidy or financial assistance from the Government or other institutions or individuals. No doubt, according to the assertions of respondents Nos. 1 and 2, the Government has invested rupees ten lakhs in the HAFED but it is not disputed that this amount does not constitute the whole or major part of its funds. Its management vests with a Board of Directors. No doubt, the Registrar, Co-operative Societies, Haryana, or his nominee; the Director of Agriculture, Haryana, or his nominee; the Director, Food and Supplies, or his nominee, and the Managing Director of the HAFED are some of the members constituting the Board of Directors, but there are other directors also, such as a nominee of the Apex Co-operative Bank, one representative for every ten-member societies or part thereof and any other member nominated by the Registrar of the Co-operative Societies. According to section 31 of the Act, Managing Director of the HAFED is appointed by the Government and he is a member of the Indian Administrative Service or of Haryana Civil Service (Executive Branch) but he is not all powerful and has to work as per the mandate of the Board of Directors. The General Body of the members of the HAFED has, amongst other powers, the right to remove members of the Board of Directors. No doubt, a resolution of the General Body removing a Director of the Board of Directors or any other Director, is valid only if it is carried by majority at a general meeting at which not less than two-thirds of total number of members are present. The infra-structure of the HAFED, as envisaged by the above provisions, leaves no doubt that it is a co-operative society in its true sense. Thus, the crucial question is, whether, in spite of

the fact that it is a co-operative society, is it wholly or substantially owned or controlled by the Government? The status of a co-operative society, the history of the co-operative movement and its principles have been lucidly explained by a Division Bench of Patna High Court in *Harender Narain Banker v. The State of Bihar and others* (1), and it would be proper to reproduce a part of the discussion contained therein, which is as follows :—

“However, what is of paramount significance herein is that test I aforesaid has to be viewed in the context of the fact that respondent Biscomaun is a co-operative society run on co-operative principles, which stand incorporated in the Act and the Rules framed thereunder as also the bye-laws of Biscomaun itself. The history of the co-operative movement and its principles in Europe and, in particular, in India as also its altruistic objects are too well known and it is unnecessary to launch an elaborate dissertation on the point. It would, perhaps, suffice to mention that the father of the co-operative movement (who was also the founder of British Socialism) was one Robert Owen (1771—1828). His main thesis was a lack of trust in the State to solve the economic problems of the people and a corresponding faith and hope in the voluntary association based on principles of mutual help. He projected the concept of co-operation as a basis of the new social and economic order and his movement was built upon the free choice of the people and the principles of democratic management. This movement spread to all the democratic countries of the West and, in particular, Rochdale Pioneers in England for the first time established their well-known Equitable society in 1834 for self-help and mutual help. The underlying principles of co-operation projected by the Rochdale Pioneers consisted of Voluntary Association, Democratic Management, self-help, mutual help and no profit motive, etc. With this brief conspectus of the development of the movement in Europe, one may now turn to the co-operative movement in our own country. Long before the Constitution came into force, the co-operative movement was regulated and governed by the Central Co-operative Societies Act, 1912. Its main provisions would indicate

(1) 1985 Labour and Industrial cases, 1807.

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that the co-operative movement in India was, more or less, the creation of the statute which had as its object the promotion of the economic interest of the members of society registered under it in accordance with the co-operative principles. These co-operative societies, though conceived as democratic bodies, still had a large measure of control of the Registrar thereon. It would appear from the development of the co-operative movement from time to time in India that the same has been somewhat Government initiated and has been largely nurtured and guided by the State. Later, when co-operation became a State subject, the Central Act was followed by various State Acts including our own, namely, the Bihar and Orissa Co-operative Societies Act, 1935.

Now, the whole gamut of this Act and the Rules framed thereunder as also the model bye-laws for the co-operative societies (including those of Biscomau) would show that in the ultimate analysis they are rested on the larger principles of co-operation which are sought to be codified and given a legalistic form by the statutory provisions. The golden web that runs through the fabric of the co-operation movement is that of self-help and mutual help through democratic management and a conscious eschewing of the profit motive. In the field of democratic management the hallmark of the concept seems to be focussed on the foundational premise that one member of the co-operative society should ordinarily be the exact equivalent of the other and each one of them should have one vote only. In the case of apex bodies having co-operative societies as their members some marginal deviation from this rule is inevitable. This principle is in the sharpest contrast to the ordinary rules of commercial and business management and that of company law where usually, if not invariably, the ultimate voting power is related to the quantum of shareholding. Therefore, in the realm of co-operation, financial shareholding is on an entirely different footing and by itself is not in any way a conclusive or controlling feature. On the other hand, this may well be so in purely business and commercial organisations motivated wholly for profit. Herein lies

the sharp line of distinction between such an organisation and a co-operative society resting on the recognized principles of co-operation."

(8) I am, therefore, of the view that the HAFED, a co-operative society, is independent in its constitution and is neither wholly nor substantially owned or controlled by respondent No. 1. The mere fact that its Managing Director is a member of the Indian Administrative Service or of Haryana Civil Service and is appointed by the Government or that the Registrar of Co-operative Societies has certain powers regulating its functioning, does not give deep and pervasive control to respondent No. 1 over it. It is, therefore, logical to conclude that proviso to rule 10.2 of the Rules is not attracted and the principal provision thereof to the effect that no Government employee may be transferred to foreign service against his will, would be attracted in the present case. Admittedly, the petitioner has been sent on deputation to the HAFED as Additional Managing Director against his will. This is certainly violative of the said rule and, therefore, the impugned order cannot be sustained.

(9) The learned counsel, appearing for the respondents, asserted that Additional Managing Director performs all those duties and functions which a Managing Director of the HAFED is required to carry out. According to him, since the power of appointment of Managing Director vests in the Government, the Additional Managing Director also can likewise be appointed by the Government even without a requisition from the HAFED. I find no force in this contention. Appointment of a member of the Indian Administrative Service or of Haryana Civil Service by the Government as Managing Director of a co-operative society is governed by the statutory provisions contained in section 31 of the Act. There is no similar provision vesting powers with the Government to appoint an Additional Managing Director of a co-operative society and, for that matter, an Additional Managing Director of the HAFED. The learned counsel then contended that, by Annexure P. 4, the petitioner has been simply transferred from one post to another and that this Court should not interfere with the matter of transfers, which is purely an administrative function of the Government. There is again no force in this contention. Annexure P. 4 makes it clear that the petitioner is being sent on deputation; in other words, on foreign service to the HAFED and, the petitioner being

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not willing to go on deputation, the said order is violative of rule 10.2 (a) of the Rules.

(10) In view of the above discussion, this petition is allowed, the impugned orders Annexures P. 4 and P. 7, dated 3rd August, 1985 and 9th September, 1985, respectively, are quashed. There shall, however, be no order as to costs.

H.S.B.

Before D. V. Sehgal, J.

GANESH SUGAR WORKS and others,—*Petitioners.*

versus

STATE OF HARYANA and others,—*Respondents.*

Civil Writ Petition No. 5483 of 1985.

January 24, 1986.

Constitution of India, 1950—Article 19(1)(g)—Essential Commodities Act, 1955—Section 2(e)—Haryana Sugarcane (Control) Order 1965—Clause 6—Haryana Khandsari Sugar Manufacturers Licensing Order, 1972—Clauses 3(1) and 3(3)(c)—Haryana Gur Manufacturing Licensing Order, 1972—Clause 3—Licenses granted to Khandsari unit for a number of years—Khandsari unit as also Gur manufacturers subsequently prohibited from manufacturing Khandsari or Gur—Monopoly to crush sugarcane and manufacture sugar reserved to the various sugar mills—Complete prohibition so imposed on the manufacture of Khandsari and Gur—Whether valid.

Held, that one of the important considerations to hold a restriction to be reasonable within the meaning of Article 19 of the Constitution of India, 1950, is that it should be in the public interest and should be imposed by striking a just balance between deprivation of right and danger of evil sought to be avoided. It cannot be gainsaid that Khandsari and Gur are the sweetening agents consumed by a majority of rural and poor populace of consumers in the country, may be because of habit or because of the reason that they cannot afford the cost of sugar for their consumption. If khandsari and Gur are not at all produced during the crushing season, there would certainly be a famine of sweetening agent for the poor populace. It