

CHAPTER VI *

GRANTS-IN-AID IN LIEU OF JUTE EXPORT DUTY

Constitutional provision.—One of the forms of grants-in-aid provided for by the Constitution is to the four States of West Bengal, Bihar, Assam and Orissa in lieu of their share of the export duty on jute and jute products. We have been directed by the President to make recommendations to him regarding the sums to be prescribed as grants-in-aid payable to these States under Article 273.

2. *Historical retrospect.*—The jute export duty was first levied in 1916 and became divisible with the jute-growing Provinces only under the Government of India Act, 1935. The question of giving the jute-growing Provinces a share of the export duty on jute and jute products was considered during the constitutional discussions preceding the enactment of the Government of India Act, 1935. The Government of India Act, 1935, in Section 140(2) provided that "one half or such greater proportion as His Majesty in Council may determine of the net proceeds in each year of any export duty on jute or jute products shall not form part of the revenues of the federation, but shall be assigned to the Provinces or federated States in which jute is grown in proportion to the respective amounts of jute grown therein." Sir Otto Niemeyer who was asked to make recommendations regarding the proportion of the export duty to be assigned to the Provinces recommended that the provincial share be increased to 62½ per cent of the net proceeds and this recommendation was embodied in the Government of India (Distribution of Revenues) Order, 1936.

3. The division of Bengal and Assam on the partition of the country, which resulted in roughly 70 per cent of the jute growing area of undivided India being included in Pakistan, necessitated the reconsideration of the allocation of the duty made in the Government of India Act, 1935, particularly as the basis of distribution between the Provinces was the amount of jute grown in them. Accordingly, when the Government of India Act, 1935, was adapted at the time of the transfer of power, the provision in Section 140 about the proportion of the jute export duty allocable to the Provinces was amended and the provincial share was left to be prescribed by Order of the Governor General. In the altered circumstances the Government of India decided that the share of the jute export duty allocable to the Provinces should be reduced from 62½ per cent of the net proceeds to 20 per cent, the basis of allocation among the Provinces continuing to be the amount of jute grown in them. The necessary

Order was made by the Governor General from year to year prescribing this percentage. This reduction in the share of the jute export duty led to protests from certain jute-growing States. The difficulty created for the Government of West Bengal by the loss of revenue from this source was recognised by the Government of India who sanctioned *ad hoc* grants of Rs. 40 lakhs in 1947-48 and Rs. 50 lakhs in each of the years 1948-49 and 1949-50.

4. The Expert Committee on the Financial Provisions of the Union Constitution held that export duties were unsuitable for sharing with the Provinces and recommended that these should be entirely Central. They, however, proposed that the Provinces which were receiving a share of the export duty on jute and jute products should be compensated for the loss of this item of revenue. They suggested a grant of Rs. 100 lakhs to West Bengal, Rs. 15 lakhs to Assam, Rs. 17 lakhs to Bihar and Rs. 3 lakhs to Orissa.

5. The Constitution has made no provision for the sharing of export duties. The principle of compensation, for a transitional period, to the four jute-growing States was incorporated in Article 273. The sums to be paid were not, however, specified but were left to be prescribed by the Order of the President. After a Finance Commission have been constituted, the President is required to make the Order after considering the recommendations of the Commission.

6. In November 1949 the Government of India requested Shri C. D. Deshmukh to determine the grants-in-aid payable to the four States mentioned above. Shri Deshmukh held that the grants-in-aid payable to these States must necessarily be related to the sums actually received in the past by the States concerned, viewed as part of their revenue, and could not be related to any estimates of the net proceeds in future years of the export duty. He decided that, until the Finance Commission proposed any revision, the following annual grants-in-aid should be paid to these States:—

	(In lakhs of rupees)
West Bengal	105
Assam	40
Bihar	35
Orissa	5

These grants-in-aid were paid in 1950-51 and 1951-52.

7. *Claims by States.*—In their representations to the Commission the Government of West Bengal stated that the reduction of the provincial share of the jute export duty by the Government of India in 1947 without consulting the Provinces was unjustified and did not take into account the fact that because of the location of the jute industry

in Calcutta there was no diminution in the revenue from the export duty as a result of the partition. They contended that the reduction in the provincial share and its distribution on the basis of the volume of jute grown adversely affected West Bengal only where almost the whole of the manufacturing capacity was located, and not the other jute-growing Provinces. They also stated that the decision of Shri C. D. Deshmukh about the amount of the grant-in-aid payable to West Bengal, which related it to the sums actually received in the past, was not correct, as the basis of the previous allocation itself was open to question. They submitted that the Commission had first to decide, having regard to the language of Article 273 (1), whether the grants should vary from year to year in relation to the net proceeds of each year and, if the Commission came to the conclusion that the grants should be fixed once for all, they suggested that the grants should be fixed in relation to the revenue of 1951-52. Incidentally, we may mention that the Government of West Bengal in their comments on the Deshmukh award (a copy of which was submitted by them to us) agreed "that the grants or the compensation payments must be related to the sums received in the past and not what may be received in the future".

The Government of Assam urged that the Commission should restore the States' share of the duty to the original 62½ per cent.

The Government of Orissa were of the view that if the grant-in-aid was to be in the nature of a compensation the amount should be fixed on the basis of what the States had actually received in the past.

The Government of Bihar suggested that the share of the jute-growing Provinces should be fixed at a suitable percentage, above 20 per cent of the net proceeds of the duty, and distributed on the basis of the amount of jute grown in each Province.

8. *Implications of Constitutional provisions.*—In view of the point raised by some of the States regarding the construction of Article 273 we had first to consider whether the language of this Article required the grants-in-aid to be related to the net proceeds of the duty in each year. After a careful examination of the question we have come to the conclusion that the Article cannot bear such an interpretation. Firstly, if the intention of the Constitution had been to maintain, for the limited period mentioned in Article 273, the right of the four States mentioned in that Article to a grant equivalent to a share of the export duty on jute and jute products, the Constitution would have made a specific provision to that effect. Secondly, in terms, this Article requires the President to prescribe *sums* of money for each State and not shares of revenue. Thirdly, as jute is grown in some of the other States also it could not have been the intention of the Constitution to limit the payment of the grants-in-aid to these four States, except

on the basis of compensation for the loss of an item of revenue which had accrued to them in the past. We consider that the references in this Article to the payment being in lieu of a share of the export duty should be construed not as continuing a right to a share of revenue but as indicating the reason for which the grants-in-aid are to be made. Similarly, the reference in sub-clause (2) of that Article to the continuance of the export duty on jute as a condition to the making of the grant should be construed not as establishing any direct connection between the amounts of the grants-in-aid and the revenue collected in each year, but as limiting the payment of the grant to the period during which the duty itself—in regard to which the temporary right to receive a grant arose—continues. We are, therefore, of the view that the grants-in-aid under this Article should not be related to the amount of the revenue in each year subsequent to the commencement of the Constitution. For the same reason, we are unable to accept the contention of West Bengal that the grants-in-aid should be related to the revenue of 1951-52.

9. A suggestion was made before us by a Chamber of Commerce that the grants-in-aid to these four States should be determined with reference to the proportion which the revenue from this source bore in the past to the total revenue of the State. In the allocation of the States' share of the export duty in the past this had never been a consideration and we see no reason why it should now be imported into this question. The suggestion also seems to ignore the fact that under the Constitution *sums* have to be prescribed which, once prescribed, will *continue* to be charged; it would be impossible to do this if the grants-in-aid were to be related to the total revenue of the State in subsequent years, which cannot be foreseen.

10. *Determination of grants-in-aid.*—On the view of the constitutional provision taken by us the grants-in-aid payable to these States have to be of fixed sums. Considering, however, the objection raised by the Governments of these States that the alteration in the provincial share of the export duty by the Government of India in 1947 was made without consulting them, we feel that it would not be proper to fix the grants-in-aid with reference to the actual sums received by the four States under the revised allocation. In our opinion it would be reasonable if the shares of these States in 1949-50—the last year in which the States were entitled to a share of the jute export duty—were worked out on the basis of allocation before its modification by the Government of India in 1947, and grants were determined accordingly.

11. The Government of India Act, 1935, read with the Government of India (Distribution of Revenues) Order, 1936, provided for the distribution of 62½ per cent of the net proceeds of the export duty on jute and jute products among the jute-growing Provinces in proportion to the volume of jute grown therein. In 1949-50 the net proceeds

of the export duty were Rs. 968 lakhs and the divisible pool for that year at 62½ per cent would amount to Rs. 605 lakhs. The total quantity of raw jute exported in 1949-50 was 2.01 lakh tons and the raw jute used in the manufactured goods exported in that year (on the assumption* that the manufacture of 1 ton of jute goods requires 29 maunds of raw jute) was 8.38 lakh tons. During that year the production of raw jute in these four States was:

(In lakhs of tons)

West Bengal	2.59
Bihar	1.29
Assam	1.28
Orissa	0.26

As the basis of distribution, which has remained unchanged ever since the jute duty began to be shared, is the amount of jute grown, these four States cannot, in equity, lay claim to the whole of the divisible pool as a much larger quantity of jute than grown in these States went into the total exports for that year, taking raw jute and manufactured goods together. Even on the assumption that the entire production of these States went into exports in that year and that the demand for local consumption was met entirely from other sources, the *pro rata* share of these States in the divisible pool for that year would, in round figures, amount to:

(In lakhs of rupees)

West Bengal	150
Bihar	75
Assam	75
Orissa	15

We recommend that these sums be prescribed as grants-in-aid payable annually to these States under Article 273 of the Constitution, with effect from 1952-53.

* Monthly Summary of Jute and Gunny Statistics.

CHAPTER VII

PRINCIPLES OF GRANTS-IN-AID

Constitutional provisions.—The Finance Commission have been charged under Article 280 (1) (b) of the Constitution, with the duty of making recommendations to the President as to the principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India. Article 275 provides for the payment of such sums as Parliament may by law provide as grants-in-aid of the revenues of such States as Parliament may determine to be in need of assistance. The first proviso to Article 275 requires grants to be made to a State to enable it to meet the cost of schemes of development undertaken with the approval of the Central Government for the purpose of promoting the welfare of the Scheduled Tribes or to raise the level of administration of the Scheduled Areas in the State to that of the rest of the areas of that State. In regard to Assam, the second proviso requires the payment of a grant-in-aid equivalent to the average excess of expenditure over the revenues of the State during the two years preceding the commencement of the Constitution in respect of the administration of the tribal areas specified in Part A of the table in paragraph 20 of the Sixth Schedule, and the cost of such schemes of development as may be undertaken by that State, with the approval of the Government of India, for raising the level of administration of these areas to that of the rest of the areas of that State. Provision is made in Article 273 for grants-in-aid of the revenues of the States of Assam, Bihar, Orissa and West Bengal in lieu of their share of the net proceeds of the jute export duty.

2. We have dealt with the grants-in-aid in lieu of the share of jute export duty in an earlier chapter. In regard to the grants-in-aid under the provisos to Article 275, the principles of these grants are contained in the provisos themselves. The principles which we enunciate in this chapter would, therefore, concern the grants-in-aid of the revenues of States, under the substantive portion of clause (1) of Article 275.

3. *Scope of grants-in-aid of revenues.*—The term “grants-in-aid of the revenues” has not been defined in the Constitution. Both the Government of India Act, 1935, and the Constitution contain provisions under which assistance may be given to the States by way of grants. Section 142 of the Government of India Act provided for the payment of such sums as might be prescribed by His Majesty in Council as grants-in-aid of the revenues of such Provinces as His Majesty might determine to be in need of assistance, while Section 150 gave the