

Seminar

on

Government Regulation of Private Enterprise

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Control on the Cement Industry

by

S.C. Aggarwal

1. Cement is a versatile building material and is used extensively not only for the strength imparted to the construction but also for the aesthetic touch it gives to the buildings. Cement is, therefore, being used as much for private house construction as for building concrete roads and bridges, multi-purpose dams, towers and other industrial construction. The industry occupies an important place in economic development and the production and consumption of cement is recognised as one of the important indicators of the social and economic progress of any country.

2. The production of cement in India commenced in 1914 with the establishment of the first cement factory in Gujarat. Since then, the Industry has made steady progress. The advent of independence gave an impetus to the expansion of the Industry. The Five Year Plans of development provided progressively higher targets for the substantial increase in the production of cement. At the time of independence, there were 18 cement factories in India with a production capacity of 1.5 million tons. Since then, many new factories have been established in the different regions and several of the existing factories have been expanded. There are now 43 cement factories in the country and the production capacity has risen to 14.51 million tonnes. Despite this growth, the per capita consumption of cement in the country is about the lowest in the world and it is certain that the Industry will continue to grow further to meet the increasing requirement of cement as the economy moves forward.

\*. Secretary, Dalmia Cement (Bharat) Ltd.

3. Control on the price and distribution of cement was introduced for the first time in 1942 in the wake of World War II, when cement was requisitioned by the Government for defence and prices for supplies to Government were fixed on a cost-plus basis. Even after the conclusion of the War, the price of cement continued to be regulated under informal control. The Industry functioned under a gentlemen's agreement and sought approval of the Government to any increase in the cement price. The distribution of cement was also regulated under a system of allocations. The annual production of cement was estimated and Government consumers, important industries, and the public shared the available supplies. Regional Honorary Cement Advisers were appointed by the Central Government who operated the allocation system and issued authorisations to Government consumers and industries. The quota left over for public consumption was marketed by the cement producers through their network of stockists and distributors. This system was by and large found satisfactory. It met the objectives of Government as also left a measure of freedom and initiative to the cement producers to organise the marketing of their production.

4. Statutory control on the price and distribution of cement was imposed throughout the country, for the first time in 1956. The Central Government issued The Cement Control Order, 1956 in exercise of the powers conferred by Section 18G of the Industries (Development & Regulation) Act, 1951. The control, which came into effect on 1st July, 1956, was introduced, so the Order said, for the purpose of securing the equitable distribution of cement and its availability at fair prices. The main reason for the issue of The Cement Control Order was the intended import, on a large scale, of cement and proposed distribution of this high-cost imported cement along with the indigenous cement at equalised prices.

5. The scheme of the Cement Control Order, 1956 was broadly as follows:-

- a) The cement companies were required to sell their entire production to The State Trading Corporation of India Ltd. (STC);
- b) The cement companies were entitled to receive ex-Works retention prices for cement at varied rates as set out in the Schedule. These

rates were stated to have been determined by the Central Government having regard to the recommendations of the Tariff Commission and to all other relevant circumstances.

- c) STC was given the exclusive responsibility for distribution of cement throughout the country at a uniform equalised F.O.R. destination price.
- d) So far as the pattern of distribution was concerned, the system of allocations mentioned earlier was generally followed and the allocation and issue of authorisations was handled by the STC and its regional officers.

6. Though the situation in respect of the demand and availability of cement changed considerably soon after the issue of the Cement Control Order, 1956 resulting in stoppage of all imports, the statutory control on the price and distribution of cement continued, with minor amendments in the Control Orders from time to time, until 31st December, 1965. The retention prices were revised on some occasions, as a result of representations made by the cement companies. Likewise, the uniform F.O.R. destination price of cement was also raised whenever revision of the retention prices, or increase in railway freights or other factors made this necessary.

7. The cement companies as well as the STC faced numerous problems in the different States in the matter of levy of sales tax. On account of the use of the words "producers to sell cement to Corporation" in the Cement Control Order and the provision therein for payment of "price" by STC to the cement producers, some States took the view that the transaction between the producer and the STC was a sale and attracted levy of sales tax. In the case of Orissa Cement Limited v/s. The State of Orissa (1961 S.T.C. 205), the Orissa High Court however, rejected the view taken by the State authorities and held that being a compulsory sale, the transaction could not be subjected to levy of sales-tax. Again, the Sales-tax authorities in Madras State levied sales-tax on the element of packing charges on the ground that the transaction in regard to cement not being a sale, the recovery on account of packing charges was not deductible from the sales turn-over.

Sales-tax was levied on the packing charges paid by the STC to the cement producers as also on the recovery of the said charges by the STC from the consumers on the ground that there had been a sale of the packing material. The assessment was, however, set aside by the Madras High Court which held that there was no sale of packing material.

8. Towards the end of 1965, Government decided, as an experimental measure, to remove the statutory control on cement. Though the Cement Control Order was revoked, it could hardly be said that cement was "decontrolled". The Government had acted on an assurance by the Cement Industry that it would maintain the existing pattern of distribution of cement and that there would be no increase in the cement price without previous approval of the Central Government. Thus, while the Industry took on the responsibility for ensuring the fair distribution of cement to the consumers throughout the country, it nevertheless operated under various constraints and Government closely watched the distribution arrangements instituted by the Industry.

9. The cement producers got together and set up a new organisation by the name of "Cement Allocation and Coordinating Organisation" (CACO). CACO set about its task with vigour and soon the distribution procedures were streamlined. The consumers of cement welcomed the ease and convenience with which they could obtain their requirements. No more did they have to go through the tortuous rationing procedures of the past to secure cement permits. In November, 1967, a statement was made on behalf of the Government confirming that the arrangements made by CACO for distribution of cement were satisfactory.

10. However, Government thought it fit to re-impose statutory control on cement with effect from 1st January, 1968 and once again, promulgated the Cement Control Order, 1967 in exercise of the powers conferred by Sections 18G and 25 of the Industries (Development & Regulation) Act, 1951. The scheme of cement distribution under this Order is different in material respects from the Control Orders in force during 1956-1965. Some of the salient features of the Control Order are:-

- a) the marketing of cement has been left to the cement companies, unlike in the past when the entire production was to be sold

compulsorily to the STC which had been made the central agency for distribution of cement;

- b) a Controller has been appointed to give effect to the scheme of the Control Order. The Controller is empowered to regulate and direct the distribution of cement through a system of allocations and authorisations;
- c) the cement companies are required to sell cement at the uniform equalised F.O.R. destination price specified in the Cement Control Order; and
- d) Out of the sale proceeds, the cement companies are entitled to retain:
  - i) the ex-Works retention price allowed to them as specified in the Schedule to the Cement Control Order;
  - ii) the Excise Duty;
  - iii) Packing charges for cement; and
  - iv) Selling Agency commission at the rate of Rs.1.25 per tonne.

The balance left over after the above appropriations, is required to be made over by the cement companies to the Controller. These moneys may be applied by the Controller for equalising the expenditure on freight, concessions granted over supplies to Government or for purposes of export and other expenses of the Controller.

11. Under the Control Order, the Cement Corporation of India Ltd. was appointed as the Controller. The appointment of the Cement Corporation of India Ltd. as Controller was called into question on the ground that under Section 25 of the Industries (Development & Regulation) Act, 1951, only an officer or an authority could be appointed as a Controller and that the appointment of the Cement Corporation of India Ltd. was ultra-vires. The objection was up-held by the Rajasthan High Court in The Jainur Udyog Ltd. v/s. The Union of India, in a Writ Petition challenging several provisions of the

Cement Control Order, 1967. Following the judgment of the Rajasthan High Court, the Central Government appointed one of its senior officers as the Controller.

12. In the writ petition filed by The Jainpur Udyog Ltd. against the Union of India and the Cement Corporation of India Ltd. before the Rajasthan High Court, the Cement Control Order was challenged on a number of grounds. Some of the more important contentions were :-

- a) It was neither necessary nor expedient to make the Order for regulating the supply and distribution of cement and that in promulgating the Order, the Central Government had acted on extraneous considerations. The Control Order, it was contended, was outside the scope of Section 18G of the Industries (Development & Regulation) Act, 1951;
- b) The ex-factory prices for the various cement producers had been fixed arbitrarily and were in violation of Articles 14 and 19(1)(g) of the Constitution.

Similar writ petitions challenging the Cement Control Order, 1967 have been filed by other cement companies and are pending in different High Courts.

13. It was contended before the Rajasthan High Court that the distribution of cement under the aegis of CACO had been equitable and satisfactory and that this was admitted by the Government in a note submitted of Industrial Development on 10th November, 1967 to the Central Advisory Council of Industries. The relevant observations in the said note were as under :-

"The distribution arrangement after decontrol has been satisfactory as the total despatches of cement during 1966-67 have increased over the figures of 1965-66 by about one million tonnes. The CACO has also ensured supply of cement all over the country at a uniform price based on past pattern of despatches. No serious complaints of shortage have been received from any corner."

Despite this, the Central Government thought it fit on 23rd December, 1967, a little over a month after the Note placed before the Central Advisory Council of Industries, to issue the Control Order on the ground that it appeared to the Central Government that it was necessary to regulate the supply and distribution of cement for the purpose of securing its equitable distribution and availability at fair prices. The contention raised by the Jainur Udyog Ltd. was rejected by the learned Judges of the Rajasthan High Court. They held that the Cement Control Order was within the scope of the powers conferred on the Central Government by Section 18G of the Industries (Development & Regulation) Act.

14. The learned Judges also rejected the contention that the differing retention prices allowed to the cement producers as per Schedule to the Cement Control Order had been arbitrarily fixed and that these were discriminatory and consequently violative of Article 14 of the Constitution.

15. In the Schedules to the earlier Cement Control Orders, it was specifically mentioned that the ex-works retention prices stated therein had been determined by the Central Government having regard to the recommendations of the Tariff Commission on the revision of prices of cement and to all other relevant circumstances. In the Cement Control Order, 1967, there is no mention as to the basis adopted by the Central Government in fixing the prices for the different producers of cement. It was stated on behalf of the Central Government before the Rajasthan High Court that the prices listed in the Schedule to the Cement Control Order were based on the recommendations of the Tariff Commission together with increases granted from time to time to off-set the increases in production costs.

16. The question of fair prices payable to the cement producers for cement came up before the Tariff Commission on three occasions - in 1953, 1958 and 1961. It is sufficient to look briefly at the third report of the Tariff Commission on cement prices submitted in 1961. The Tariff Commission made a detailed study of the production costs of the Industry and after allowing for a return on capital employed varying from 8% to 14%,



19. The Jaipur Udyog Ltd. has filed an appeal before the Supreme Court against the judgment of the Rajasthan High Court and further light will be thrown on the validity of the Cement Control Order when the Supreme Court takes up the appeal for hearing and delivers its final judgment.

20. One of the underlying purposes of maintaining a control on the price of cement is to bring about the availability of cement throughout the country at a uniform average F.O.R. destination price. While there would appear to be some merit in making this essential and developmental commodity available throughout the country at a uniform price, this system of pooling the differential retention prices and cost of freight has led to some undesirable trends. Firstly, under this system, there is little or no incentive for cement producers to reduce their costs by improving operational and managerial efficiency. The system enables the marketing of high-cost cement by averaging the prices. Secondly, the consumers situated in the close proximity of the cement factories are being made to pay a high element of freight charges to subsidise consumers who are catered over a much longer lead. While this has to some extent been helpful in the disposal of surplus production in relatively distant markets, as a result of this formula the market factor does not receive its due importance in the location of the cement plants.

21. The existence of the control measures even at a time when production gets to be in surplus, creates avoidable marketing problems for the cement producers. At present, on account of a slow-down of the public investment and non-materialisation of several projects, the Government consumption of cement has gone down to a very low level. On the other hand, cement production capacity has been continuously rising. The result has been that surplus conditions have developed practically all over the country and the producers are finding it extremely difficult to market their entire production. With the existence of control on distribution, producers do not enjoy the necessary freedom to expand the market through sales drive and competition.

22. Controls are always regarded as temporary expedients to protect the consumers against exploitation in the event of serious shortages of a product. With the imposition of control, the policy should aim at a rapid expansion in the supplies of the controlled product so that, at the earliest opportunity, the control can be eliminated. This would be possible only if the Industry is enabled through a realistic price policy to generate internal resources and to attract outside investment. Unfortunately, in the case of Cement Industry, the policy followed by Government has not fulfilled these objectives. The protracted and rigorous control exercised by Government has prevented the Industry from developing the requisite financial health and dynamism which are necessary for its sustained growth.

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