

(1999) 02 AHC CK 0119

In the Allahabad High Court

Case No : Writ Petition No. 775 (M/B) an 2086 (M/B) of 1997

Agauta Sugar and Chemicals

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 01-02-1999

Acts Referred:

Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1953 — Section 14, 15, 16(2), 31

Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Rules, 1954 — Rule 3(1), 3(2), 48, 96

Citation : (2000) 2 AWC 1250

Hon'ble Judges : S.H.A. Raza, J;Dr. M. Saran, J

Bench : Division Bench

Advocate : Sushil Kumar and Jatinder Kumar Seth, for the Appellant; C.S.C. and Prashant Chandra, for the Respondent

Final Decision : Allowed

Judgement

S.H.A. Raza, J.—The question of facts and law involved in both the abovementioned writ petitions are common and hence both the writ petitions are being disposed of by single common Judgment. However, Writ Petition No. 775 (M/B) of 1997 "Agauta Sugar and Chemicals v. State of U. P. and others" shall be the leading case.

2. Agauta Sugar and Chemicals, by means of the Writ Petition bearing No. 775 (M/B) of 1997, has prayed for issuance of a writ in the nature of certiorari quashing the impugned recovery certificate dated 13.2.1997 issued by the Cane Commissioner. U. P. Lucknow and the recovery citation dated 21.2.1997 issued by the Tehsildar, Bulandshahr contained in Annexures-6 and 7 to the writ petition. The petitioner also prayed for issuance of a writ in the nature of mandamus commanding the respondent not to adopt coercive method of recovery against the petitioner on the basis of recovery certificate dated 13.2.1997 and recovery citation dated 21.2.1997.

3. The petitioner holds an industrial licence for running a sugar factory, which commenced production of sugar from sugar season 1994-95. The Cane Commissioner has reserved the cane centres for crushing the cane and manufacturing the sugar.

4. Cane price for every year is fixed by the Central Government under clause 3 (1) of the Sugarcane (Control) Order, 1966, framed under the Essential Commodities Act, 1955. Clause 3 (3) of the Sugarcane (Control) Order, 1966, reads as under:

"Where a producer of sugar purchases any sugarcane from a grower of sugarcane or from a sugarcane grower's cooperative society, the producer shall, unless there is an agreement in writing to the contrary between the parties, pay within fourteen days from the date of delivery of the sugarcane to the seller or tender to him the price of the cane sold at the rate agreed to between the producer and the sugarcane grower or sugarcane growers' cooperative society or that fixed under sub-clause (1), as the case may be, either at the gate of the factory or at the cane collection centre or transfer or deposit the necessary amount in the bank account of the seller or the cooperative society, as the case may be."

(emphasis laid)

5. Clause 3A provides where a producer of sugar or his agent fails to make payment for the sugarcane purchased within 14 days of the date of delivery, he shall pay interest on the amount due at the rate of 15 per cent per annum for the period of such delay beyond 14 days. Where payment of interest on delayed payment is made to a cane growers' society, the society shall pass on the interest to the cane growers concerned after deducting administrative charges, if any, permitted by the rules of the said society.

6. Thus, it is evident that unless there is an agreed price under clause 3 (3), the minimum price fixed under clause 3 (1) is to be paid, but if there is an agreement, then the agreed price either to the cane growers or to the cane growers' cooperative society should be paid.

7. The State Government of U. P. has been announcing a State Advised Price for cane every year and enforcing the same against sugar factories by coercive methods. The main thrust of the petitioner in Writ Petition No. 775 (M/B) of 1997 is that U. P. Sugarcane (Regulations of Supply and Purchase) Act, 1953 and the rules framed thereunder do not contain any provision empowering the State Government to fix the State Advised Price and hence, according to the petitioner, the action of the Cane Commissioner and the District Magistrate to issue recovery certificate and citation is without any sanction.

8. Before dealing with the question as to whether State Government of U. P. can fix the cane price and enforce the payment of such State Advised Price to the growers or growers' cooperative society, certain facts need to be elucidated.

9. The State Advised Price was declared for two varieties of sugarcane by the Cane Commissioner after holding meeting and consultation with the representatives of the cane growers and the sugar mills in the month of November. 1996 and 1997 for the seasons 1995-96 and 1996-97. The State Advised Price of sugarcane was indicated as under :

"1995-96 Rs. 74 per quintal (early variety) Rs.70 per quintal (general variety)
1996-97 Rs.76 per quintal (early variety) Rs.72 per quintal (general variety)"

10. The Central Government has declared the sugarcane minimum price for the year 1995-96 as Rs. 42.50 per quintal on 14.5.1996 and for the year 1996-97 as Rs. 45.90 per quintal on 4.2.1997. But the petitioner has been making payment for the two varieties as mentioned in the State Advised Price.

11. When the petitioner preferred the writ petition, a statement was made on behalf of the petitioner before this Court, which was indicated in the order dated 27.2.1997 passed by this Court, wherein it was submitted that the petitioner would not be liable to pay any price other than fixed by the Central Government. It was also indicated in para 8 of the writ petition that so far agreement under clause 3 (3) of Sugarcane (Regulation of Supply and Purchase) Order, 1954, is concerned, no such agreement has ever been entered into, but later on the petitioner resiled from that statement and now from the side of the petitioner it was contended that although the petitioner has executed the agreement in Form "C" under clauses 3 (3) and 4 (1) on the basis of reservation order, but the "price" referred to in it, is the price declared by the Central Government and not fixed by the State Government.

12. The agreement provides that co-operative cane Union and the cane growers" society will sell their sugarcane at the minimum price notified by the Government subject to such deduction, if any as may be notified by the Government from time to time provided that price payable by the second party to the first party shall not in any case be lower than that paid generally by the second party to other growers of the villages in which cooperative societies operate.

13. It is pertinent to mention here that Form "C" being the appendix to U. P. Sugarcane (Regulation of Supply and Purchase) Order, 1954, is executed between the sugar mills and cane growers" society as provided u/s 16 (2) (c) of the Act. Form "C" is signed (as token of acceptance of contract) by the representatives of the sugar mills and cane growers" society.

14. During the course of argument in this writ petition from the side of the petitioner, it was very vehemently argued that price referred to in Form "C" is referable to the price fixed by the Central Government and not fixed by the State Government. On the other side Shri V.M. Singh, who has preferred an application for impleadment in the said writ petition, submitted that as Form "C" is the appendix to the U. P. Sugarcane Purchase Order, 1954, is executed between the sugar mills and cane growers" cooperative society as provided u/s 16 (2) (c) of the U. P. (Regulations of Purchase and Supply) Act. 1953, is relatable to the

State Advised Price. We have allowed Mr. V.M. Singh an opportunity of hearing on that question under the rules of the Court, who submitted that besides agreement in Form "C", the petitioner on purchase of the cane as per the Reservation Order and agreement gave purchase (receipts) as provided under Rule 96 of the U. P. Sugarcane (Purchase and Supply) Act, 1953, which have been filed before this Court, which indicate that the said receipts were not in accordance with the central price, but the price indicated was on the basis of the State Advised Price.

15. From the side of the petitioner. It was contended that the cane price was paid to the cane growers under the agreement in Form "C" which was in accordance with the central price provided under clause 3 (1) and additional price as advanced under clause 5 (1) of the 1966 Sugarcane (Control) Order.

16. It was submitted by the Chief Standing Counsel that under clause 5A, the petitioner was exempted from paying the additional price of cane. The central price fixed under clause 3 (1) is linked to 8.5 per cent recovery of sugar and additional price under clause 5 (1) is fixed over 8.5 per cent for every one per cent. If there would have been any truth in the contention of the petitioner, then the additional price paid as advance under clause 3 (1) would definitely be adjusted/refunded in the next year, but that is not the case of the petitioner that it should be adjusted or refunded in the next year.

17. It is pertinent to mention here that State Advised Price issued by the Cane Commissioner for the cane season 1995-96 was Rs. 70 and 74 for general and early variety respectively, while the central minimum price of the sugarcane was less than the State Advised Price, meaning thereby that the petitioner has made extra payment to the cane growers' society which could be adjusted and refunded in the next cane crushing season, but neither any refund was sought by the petitioner nor the extra payment made by the petitioner was adjusted. Thus, it is established that the central price was not mentioned in the Purchase (receipts) and the State Advised Price was shown in those purchase (receipts), which were paid by the petitioner.

18. Thus, it can safely be said that Form "C" which is based on the Reservation Order issued by the Cane Commissioner referable to U. P. Purchase Order, 1954, clearly states in the end of paragraph 1 that the instructions of the Cane Commissioner will be binding. The relevant portion is reproduced below :

"The first party further undertakes to supply good cane free from leaves, tops and roots at the factory gate or at least 25 purchasing centres in such quantities and on such dates as may be supplied in the requisition slip issued by the occupier or Manager of the factory in conformity with this agreement and the instructions issued by the Cane Commissioner."

19. It is thus, evident that State Advised Price and the Reservation Order form part of the instructions issued by the Cane Commissioner.

20. The attention of this Court was drawn by the petitioner that in some of the purchas, it is mentioned that payment was being made under clauses 3 (1) and 5A of the 1966 Order, but the amount of sugarcane minimum price (Central) or the additional price has not been mentioned.

21. There is another aspect of the matter which requires consideration. The central price of the sugarcane was fixed on 14.5.1996 for the season 1995-96 when the crushing season was going to be over, while the purchas (receipts) based on the Reservation Order were given immediately on the purchase of the cane and payment was to be made within 15 days. Hence, it cannot be said that the cane growers were paid according to the price declared by the Centre. Similarly, the minimum price for the year 1996-97 was issued by the Central Government while the crushing season started on 15th October. 1996 and the cane was purchased by the mills as per the agreements.

22. The only conclusion which can be derived from the agreement in Form "C" is that the price mentioned in the purchas (receipts) were referable to State Advised Price and the petitioner having acted upon it cannot be permitted to resale, after receiving the cane as per the agreed price, i.e., State Advised Price. Clause 5 (5) of 1966 order clearly provides that the other price/agreed price is to be higher than the one fixed under clauses 3 (1) and 5 (1). Hence, it cannot be said that the price mentioned in the purchas (receipts) was advance price under clause 5 (1).

23. It was submitted on behalf of the petitioner that there were two sets of purchas (receipts), which indicate the difference of Rs. 3, hence no reliance can be placed on those purchas. When the cane was purchased by the petitioner at the mill gate or the centres, the same was also recorded in the daily purchase sheet, which is on the record. The rate mentioned on is Rs. 70. i.e., the State Advised Price less Rs. 3 for transportation charges since the sheet refers to the cane centre Saidpur in Siyana cane society.

24. Besides the above, there is no provision to pay advance to cane growers against 5 (A) of the Sugarcane (Control) Order, 1966. If advance is paid to the cane growers by the mill, that must be paid with the permission of the Cane Commissioner, which is also evident from Rule 48 of the U. P. Sugarcane Rules. 1954, which is reproduced below :

"If with the previous general permission of the Cane Commissioner given in respect of any area any loan was advanced by the occupier of a factory for meeting the expenses of cultivation, to the cane growers from whom cane has been purchased, the amount of such loan, together with simple interest thereon at a rate not exceeding 6-1/4 per cent per annum for the period the loan has been outstanding may be deducted from the price of the cane."

25. In the Sugarcane (Control) Order, 1966, clause 3 (A) was introduced on 24.9.1976, which provides for agreements between the sugar mills and the cane growers, which is reproduced below :

"3A. A producer of sugar or his agent shall pay, for the sugarcane purchased by him, to the sugarcane grower or the sugarcane growers" cooperative society, either the minimum price of sugarcane fixed under clause 3 or the price agreed to between the producer or his agent and the sugarcane grower or the sugarcane growers" cooperative society, as the case may be."

26. It is thus, evident that clauses 5A (5) and 5A (6) of the 1966 order protect the interest of the cane growers vis-a-vis the agreed price. It provides that the cane price must be high enough to atleast match the price fixed under clause 3 (1) and the additional price fixed under clause 5A, which is normally fixed after two years.

27. The relevant provisions of clauses 5A (5) and 5A (6) are reproduced below :

"5A (5). No additional price determined under sub-clause (2) or sub-clause (3), as the case may be, shall become payable by a producer of sugar who pays a price higher than the minimum sugarcane price fixed under clause 3 to the sugarcane grower :

Provided that the price so paid shall in no case be less than the total price comprising the minimum sugarcane price fixed under clause 3 and the additional price determined under sub-clause (2) or sub-clause (3), as the case may be."

"5A (6). Where any extra price is paid by the producer of sugar to the sugarcane grower for the supply of sugarcane in addition to the minimum sugarcane price fixed under clause 3, the extra price so paid shall be adjusted against the additional sugarcane price determined under sub-clause (2) or sub-clause (3), as the case may be and the balance, if any, shall be paid to the sugarcane grower."

28. It is thus, evident that the agreed price is obviously a higher price. In that regard the reference may be made to the decision of Hon"ble Supreme Court in State of Madhya Pradesh Vs. Jaora Sugar Mills Ltd., and others etc., , wherein it was observed :

"But the material fact is that sub-section (3) also gives an indication analogous to Rule 3 (2) of the order that in addition to the price fixed the higher price should always be permissible to be entered by contract or agreement between the parties."

29. The Hon"ble Supreme Court in Slate of M. P. v. Joara Sugar Mills (supra) further observed :

"The parties would always be at liberty to agree for payment of higher price than the minimum price fixed by the Central Government and the contract will be novation of the minimum price fixed by the Central Government under Rule 3 (1) of the Order."

30. In that case Hon"ble Supreme Court also observed that the interest must also be paid on the higher price, if the price was not paid within the stipulated period.

31. Although in *State of M. P. v. Joara Sugar Mills* (supra) there was no written agreement, but there was only an oral agreement, but Hon'ble Supreme Court held that it culminates into a gentleman's contract and thus the State Advised Price is in novation of the price fixed by the Centre and is the agreed price,

32. In *S.K.G. Sugar Ltd. Vs. State of Bihar and Others*, , it was observed by the Supreme Court in paragraph 7 of the report :

"It is not in dispute that u/s 31 of the Supply Act, the State Government has power to fix the reserved area, in other words, zone was carved out for the appellant for the supply of sugarcane to the factory. All the farmers who are cultivating the sugarcane within that zone are bound by the State action to supply sugarcane to the factories within that reserved area. Consequently, the factory also is bound by the actions of the State Government. Obviously, pursuant to the obligation had by the State under the Supply Act, the meeting was convened by the State Government whereat the factory owners' association and farmers participated and agreed to fix the price at Rs. 20.50 per quintal of sugarcane. As a consequence, both the cane growers as well as the owners of the factory are bound by the decision. This having been agreed upon, the price fixed by the State Government in excess of the minimum price fixed by the Central Government under clause 3 of the order would be the price fixed for supply of sugarcane and the Government would be entitled to enforce the liability. As a consequence, the Collector was empowered and duty bound to issue a certificate of the dues as arrears of land revenue for recovery under the Revenue Recovery Act. The Certificate obviously relates to the difference between the minimum price fixed by the Central Government, i.e., Rs. 13.92 per quintal and the price of Rs. 20.50 determined by the agreement between the parties. Under the circumstances, there need not be any separate agreement to be entered into between the cane growers in the reserved areas and the appellant's factory to be enforceable. We hold that the certificate issued by the Collector is valid in law. As held earlier, the State Government acted in their statutory capacity to fix the increased price of the sugarcane. There is no need for the growers to file separate suit to recover the difference of the price. The recovery proceedings are the appropriate course of action rightly adopted by the State Government."

33. It is pertinent to mention here that the Cane Commissioner after getting the survey as provided u/s 14 of the U. P. (Regulation of Purchase and Supply) Act, 1953 and after hearing the parties, i.e., the representatives of sugar mills as well as sugarcane growers' cooperative society recommended price of the sugarcane to be paid by the mills to the cane growers to supply the sugarcane to mills. The reserved order was issued u/s 15 of the said Act, which defines the reserved area for supply of sugarcane to the mills based on the meeting and consultation, the Cane Commissioner issued the order fixing the State Advised Price for the year 1996-97 directing the mills to pay the State Advised Price being the agreed price, which is complementary to the Reservation Order. Form "C", which is an

appendix to Sugarcane (Control) Order, 1954, was executed between the sugar mills and the cane growers' cooperative society as provided u/s 16 (2) (C) of the Act. Form "C" was signed (as a token of acceptance of the contract) by the representatives of sugar mills and cane growers' society.

34. Having taken advantage of the Reservation Order, the sugar mills filed a Writ Petition Bearing No. 36889 of 1996, West U. P. Sugar Mills Association and others v. State of U. P. and others, before the Allahabad High Court, challenging the validity of the State Advised Price. The High Court allowed the writ petition, quashed the State Advised Price and the State Government was restrained from enforcing the State Advised Price as declared by the order dated 15.11.1996. While doing so, Allahabad High Court observed :

"It is, however, made clear that where an agreement in Form "B" or Form "C" of the appendix to the U. P. Sugarcane Supply and Purchase Order. 1954 has been reached between the occupier of the factory and cane growers or cane growers' cooperative society then the occupier of the factory will have to pay the cane price in accordance with the said agreement."

35. In view of the aforesaid position. It does not lie in the mouth of Mr. Sudhir Chandra, Senior Advocate, appearing on behalf of the respondents in Writ Petition No. 2086 (M/B) of 1997 that the controversy which has been raised in the" present writ petition by Mr. V.M. Singh has been foreclosed and same cannot be agitated by Mr. V.M. Singh, who himself is a cane grower, when Writ Petition No. 36889 of 1996. West U. P. Sugar Mills Association v. State of U. P. and others, was heard and disposed of after hearing the cane growers, who were parties to the writ petition, for the simple reasons that Mr. V.M. Singh, the petitioner of Writ Petition No. 2086 (M/B) of 1997 was not the party to the earlier writ petition and has filed the present writ petition as Public interest Litigation on behalf of the cane growers of the State mainly on the ground that the cane growers are entitled for the payment on the basis of the State Advised Price. As this Court in West U. P. Sugar Mills Association (supra) has clearly indicated that in case an agreement between the occupier of the factory and the cane growers' cooperative society has been reached, the occupier of the factory will have to pay the cane price in accordance with the said agreement. In the present case, there existed an agreement between the sugar mills and the cane growers' cooperative society, hence on the basis of the said agreement, the cane growers or cane growers' cooperative society are entitled to be paid the same price which is fixed by the State Government.

36. In view of the law laid down by Hon"ble Supreme Court in State of M. P. v. Joara Sugar Mills (supra) in (paragraph 18) as well as in S.K.G. Sugar Limited v. State of Bihar (supra), it is evident that where there is an agreement at the behest of the Cane Commissioner, the Judgment of Hon"ble Supreme Court in Kothari's case AIR 1996 SCW 842, will not be applicable since the State Advised Price is the agreed price. Even in Kothari (supra) the State Advised Price was quashed, in absence of an agreement, being executed by the mills with the cane

growers or the cane growers" cooperative society. Hence the ratio of Kothari (supra) is not applicable to the facts of the present case.

37. The contention of Mr. Sudhir Chandra that the present writ petition is barred by the principle of res judicata is totally misconceived in view of the law laid down by Hon"ble Supreme Court in Rural Litigation and Entitlement Kendra v. State of U. P. 1989 Supp. (1) SCO 504, wherein it was observed that in matters of grave public importance. Court is not bound by procedural technicalities.

38. Besides the above, the decision of Hon"ble Supreme Court in Kothari (supra) as well as decision of this Court in West M. P. Sugar Mills Association (supra) does not support the contentions of sugar mills, rather it supports the contentions of the cane growers/cane growers" cooperative societies.

39. Mr. P.C. Verma, learned Chief Standing Counsel placing reliance on Entry 33 and 34 of List III of Seventh Schedule of the Constitution, submitted that the State Government has been vested with a power to fix or control the price of sugarcane, as that field still remains unoccupied. We need not delve into that question, as the SLP against the order of this Court is pending before the Hon"ble Supreme Court, where that point can be considered.

40. At the time when the farmers are facing great hardship and committing suicide in various parts of the country due to the failure of the crops and they are over burdened with the loan which they are unable to pay to the financial institutions, such public interest litigation cannot be thrown out.

41. In view of the aforesaid reasons, the Writ Petition No. 775 (M/B) of 1997, in which we have provided hearing to Shri V.M. Singh, as a party, is accordingly dismissed.

42. Writ Petition No. 2086 (M/B) of 1997 deserves to be allowed. It is accordingly allowed. A writ in the nature of mandamus is issued commanding the State of U. P. as well as the Cane Commissioner, U. P. Lucknow, to enforce the payment of State Advised Price for the year 1996-97 for the sugarcane purchased by the sugarcane mills in the State as the price is complementary to the Reservation Order and direct all the sugar mills of the State to pay interest, according to law to the sugarcane growers for the delayed payment beyond fourteen days, within six weeks. The State Government is further directed to initiate recovery proceedings against the defaulting sugar mills for non-payment of the dues and in case the sugar mills fail to pay the State Advised Price and the interest to the cane growers within six weeks then the amount so recovered by the State Government in accordance with law, will be paid to the cane growers or cane growers" cooperative society.