(2009) 08 AHC CK 0106

In the Allahabad High Court

Allahabad Bank and Another APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 28-08-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 406, 420, 467, 468, 471
Penal Code, 1860 (IPC) — Section 406, 420, 467, 468, 471
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Citation : (2009) 08 AHC CK 0106

Hon'ble Judges : Sunil Ambwani, J;Dilip Gupta, J

Bench : Division Bench

Judgement

1. Heard Shri Vinay Shanker for the Allahabad Bank, the petitioner in the writ petition; Shri R.N. Trivedi, learned Senior Counsel assisted by Shri Anupam Trivedi and Shri Narendra Shukla for M/s Indo Gulf Industries Ltd.-respondent No. 6; Shri M.K.S. Yadav, Standing Counsel for the State. Shri Bireshwar Nath for the Central Bureau of Investigation (CBI); Shri Brijesh Kumar Shukla for the Employees'' Provident Fund Organisation. Shri Deepak Seth appears for Shri Mahendra Singh Chhabra, an applicant for impleadment.

2. By this writ petition the Allahabad Bank has prayed for writ of certiorari to quash the recovery certificate dated 12.8.2002 issued by the Cane Commissioner, U.P. Lucknow; the attachment proceedings conducted by the Tehsildar, Colonel Ganj, Distt. Gonda dated 22.08.2002 and the letter of communication issued by the Tehsildar, Colonel Ganj, Gonda dated 23.8.2002 to the petitioner. The Allahabad Bank has also prayed for writ of mandamus directing the opposite party Nos. 1 to 5 to remove the seals over and above the lock and key of the petitioner bank on the godowns and to allow the petitioner to operate the godowns under their lock and key.

3. During the pendency of the writ petition the entire stocks of sugar available in the godowns of M/s Indo Gulf Industries ltd. was sold in pursuance to the directions issued by the Supreme Court in SLP (Civil) No. 485 of 2003 arising out

of order of this Court dated 24.9.2002 and that entire sale consideration of the sugar bags available in the stocks was deposited with the Registrar of the Court under the directions of the Supreme Court dated 09.5.2003. The amount was invested in FDRs.

4. The Supreme Court clarified the interim order dated 24th January, 2003 to continue to apply pending disposal of the writ petition in the High Court. By order dated September 5th, 2003 the Supreme Court disposed of the Civil Appeals with directions that the amount received in the auction sale will be deposited as per the Court''s direction dated 9th May, 2003, and gave liberty to the parties to apply to the High Court for appropriate directions including where the money should be kept deposited. It was further clarified that the delivery of the sugar must be given only after the payment for that quantity is made. If any party refused to lift the stocks sold to them, or any part thereof, the amount deposited by them shall stand forfeited. It was not to be adjusted against the price payable. By order dated September 26th, 2003 the Supreme Court disposed of the applications of the successful bidders of the stocks of sugar. By an order dated 6.3.2006 this Court after quoting the orders of the Supreme Court observed that according to the parties, there were a total of 148246 bags of sugar sold by auction but when the question of actual delivery of sugar bags arose, it was found that 49128 bags of sugar were missing from the godowns. The sale proceeds of the remaining sugar bags amounting to Rs. 12,50,41,258/- is in deposit in the High Court. The petitioners applied for release of the amount.

5. The Court further observed that the Allahabad Bank and the State Bank of India as a consortium sanctioned, amongst other financial facilities like cash credit limit of Rs. 19 crores and 9 crores against pledge of stock of the finished sugar kept under the bank''s lock and key. The sugar unit concerned continued manufacturing sugar till crushing season 2001-02. The mill closed thereafter. The sugar bags stored in the godowns were pledged with the two banks. Rs. 1561.18 lacs inclusive of the commission of the society was due to the cane growers. On 15.8.2002 the Cane Commissioner, U.P. Lucknow had initiated the recovery proceedings u/s 17(2) and Section 18(3) of the U.P. Sugarcane (Supply & Purchase) Act, 1953, authorised the Collector to attach and auction the sugar bags in the godowns of the mills.

6. The Court noted the contentions of the Counsel for the bank that the banks have first charge over the stocks of the sugar and therefore the entire amount recovered from the sale of sugar bags should be released in their favour. He further submitted that on 14.6.2005 the State Government in the meeting convened by the Secretary, Ganna Vikas Evam Chini Udyog U.P. agreed that the amount deposited in the High Court, being the sale proceeds of the pledged sugar be released in the ratio of 80:20 i.e. 80% in favour of the petitioner bank and 20% in favour of the State Government for payment towards arrears of cane dues of the agriculturists in pursuance thereof the bank filed application for release of the amount. It was observed that the sugar cane growers were

entitled to release of the amount in preference to the banks. The farmers had done a lot of labour in production of the sugar cane, and their interest could not be overlooked. Thereafter, the Court in its order dated 6.3.2006 expressed its opinion that the agreement between bank and M/s Indo Gulf Industries Ltd. Was not bonafide transaction and was with an intention to delay, deprive and defeat the claim of the cane growers. The Court also expressed its deep concern over the missing 47553 bags of sugar, shown in excess in the balance sheet and directed CBI to hold an enquiry. The scope of the enquiry was made wide enough to find out the intention of the bank and its officers and M/s Indo Gulf Industries ltd. and its officers. The Court also directed the CBI to find out whether the agreement was bonafide.

7. With regard to the deposit of Rs. 12,50,41,250/''- the Court observed that earlier in Writ Petition No. 434 of 2003 (MB) a direction was given for payment of dues after recovering the same from the sugar mill. Another Writ Petition No. 6757 (MB) of 2002 was pending in the Court, which is connected with the petition.

8. Taking into account the facts and circumstances the Court directed that Rs.7,70,00,000/-, which was little above 50% of the total amount due against the sugar mill be paid over to the cane growers and taking into account that the bank had advanced credit facilities to the mill directed release of Rs. 4 crores in favour of the bank. Rest of the amount, which is less than Rs. 1 crore was directed to be kept in deposit for appropriate orders.

9. The CBI initiated a preliminary enquiry No. PE0062006A0001 and has submitted three reports. The first report was delivered to be considered by the Court on the date fixed on 25.4.2006. The second report was to be considered on the date fixed on 30.8.2006 and that the final status report was submitted with a covering letter dated 4th November, 2006. All these reports have been kept in sealed cover with the Registrar of the Court. The CBI has also taken photographs at the site and submitted an album along with its report. The preliminary enquiry has revealed that as per returns filed by M/s Indo Gulf Industries Ltd. with Asstt. Sugar Commissioner, Gonda, they were having a balance of Rs. 1,18,581 sugar bags as on July, 2002 i.e. the time till the company filed returns in the office of the Asstt. Sugar Commissioner, Gonda. The company also filed returns with the Central Excise Department, Gonda and as per this records as well as the statements of the officers of the Central Excise Department the company was having a stock of 106375 bags only as on August, 2002, at the time when recovery certificate was implemented and the mill was sealed by the district administration on August 22nd, 2002. At the time when the recovery certificate was implemented and godowns was sealed, there was a stock of only 106375 sugar bags in the godown/mill. The return filed by the company with different departments and also the letter written by Major F. Islam, the then General Manager of Maizapur Sugar Mill of the company to the District Cane Officer, at the time of sealing of godown on August 22nd, 2002, after issuance of the

recovery certificate disclosed that the number of sugar bags in the godowns were 106375 and not 148239.

10. On issue No. II the CBI reported that as per information provided by the Allahabad Bank the company had pledged the sugar bags of Rs. 61.35 crores from 1999 to August 2002. The mill was released cash credit limit of Rs. 52.15 crores i.e. 85% of the cost of the pledged sugar, and that the amount payable to cane growers at 85% of this amount comes to Rs. 44.33 crores, whereas the bank had released a marginally less amount of Rs. 44.28 crores in the accounts of cane growers. During this period the company sold sugar worth Rs. 23.42 crores, directly without pledging the same with the bank and against this they have deposited an amount of Rs. 5.72 crores only in the accounts of cane growers. On the IIIrd issue the CBI reported that banks were having first charge on the sugar pledged with them. The ratio for distribution of sale proceeds of plant and machinery of the mill was kept 80% in favour of the cane growers and thus agreement appears to be bonafide. The CBI did not find any pilferage of the stocks of sugar bags from the godowns. There was no report of any theft or breaking open the godown locks. The shutter was damaged along with covering wall on the rear side due to cyclonic storm on June 11th, 203.

11. The final report of CBI is accepted and shall be kept by the Registrar of the Court under sealed cover. It will be open to the CBI to register a first information report on the basis of the final status report and to investigate the offences.

12. In the meantime, a first information report No. 107 of 2004 dated 4.12.2004 was registered as Case Crime No. 164/04 u/s 406 420 467 468 and 471 IPC against Dr. Surendra Kumar Garg of the Indo Gulf Industries Ltd. The economic offences wing of the police department of the Uttar Pradesh investigated the alleged offences of removal of the sugar bags from the sealed godown. Late Dr. R.D. Singh of Allahabad Bank was reported to have died on 16.5.2006. Shri Surendra Kumar Garg, has taken an order from the High Court, Lucknow Bench, Lucknow not to take any coercive action against him. The Special Economic Wing has submitted a charge sheet No. 6 of 2008 against Dr. Surendra Kumar Garg on 23.9.2008.

13. It is submitted that with the submission of the charge sheet by the Special Economic Wing of the Uttar Pradesh Police, the CBI should not be asked to register a first information report. We express no opinion in this regard. As stated above, it will be open to the CBI to register a case and to investigate the offences.

14. Shri Vinay Shankar appearing for the Allahabad Bank, the petitioner in the writ petition has made a statement that the bank has recovered the entire dues form the company and that the bank does not want to press the writ petition. Ordinarily with this statement, the writ petition should have been disposed of. We, however, find that there is still some amount deposited with the Registrar. We asked the Registrar on 25.8.2009 to submit a report. The Registrar has

reported on the basis of report of the Section Officer, Cash that after encashment of fix deposits of Rs. 12,50,41,258/- only; the total amount comes to Rs. 14,48,93,960/-. Out of this amount Rs. 12,50,41,258/- has been paid vide Court''s orders dated 6.3.2006 and that there is a balance of Rs. 1,98,52,702/- in the form of STDR, still available with the Registrar, awaiting the orders of the Court.

15. Shri R.N. Trivedi, learned Counsel for the respondent No. 6 states that the balance amount should be released in favour of the company. The shares of the company have now been purchased by the Balrampur Chini Mill. The matter of rehabilitation of the company is pending in the Board of Industrial Finance and Reconstruction. The company has invested about 50 crores in the current year, in preparation to run the mill. The company badly needs finances, to start the crushing operations, to begin this year in October-November.

16. The company was required to submit the details of the accounts for appreciating the prayers to release the balance amount. Shri R.N. Trivedi has submitted the accounts of the deposits, release and the dues, which are admittedly still payable by the company. Shri R.N. Trivedi submits that apart from Rs. 15,38.14 lacs due towards cane price for the year 2001-02 and Rs. 23.04 lacs as commission due, the company is still liable to pay Rs. 26.80 lacs the differential cane price due for the year 1996-97; Rs. 29.90 lacs as cane price due for the year 2001-02 and Rs. 11.64 lacs as cane price commission due. The balance unpaid amount is Rs. 85.88 lacs. He submits that it would be in the interest of company and the farmers that the amount lying with the Registrar of the Court be paid to the company.

17. Shri Deepak Seth has filed an impleadment application stating that Shri Mahendra Singh Chabra had made a bid for sugar stock. Since the bags were not available in accordance with the inventory, Shri Mahendra Singh Chhabra has not been given the delivery of the entire stocks purchased by him in auction. He should be given the bags for which his bid was accepted, failing which his earnest money should be returned with interest.

18. Shri Mahendra Singh Chhabra has filed a Writ Petition in the Court in which a writ of mandamus was issued to deliver to him the remaining bags of the year 2000-01 against the lot purchased by him. This order dated 19.7.2004 in Writ Petition No. 3016 (MB) of 2004 has not been complied with and that contempt petition is pending. In view of the CBI report in which it was found that false inventories were generated and that the number of bags disclosed by the company were actually not stored in godowns at the time, when the district administration sealed them, it may not be possible to grant any relief to Shri Mahendra Singh Chhabra. We, however, find that his prayer to release bags in this writ petition does not require consideration in this writ petition. He may seek his remedies in the appropriate forum or may opt for release of earnest money deposited by him with interest with the concerned authority. The application of Mr. Mahendra Singh Chhabra is rejected.

19. Shri Brijesh Kumar Shukla appears for Employees Provident Fund Organisation. He also appears for one of the bidders, who has not been given all the sugar bags purchased in the auction. The provident fund dues are reported to be the subject matter of writ petition pending in the Delhi High Court. The company claims to have deposited provident fund dues of Rs. 55,53,532/- after filing of the impleadment application. We do not proposed to deal with provident fund dues in this writ petition as these dues are beyond the scope of the pleading and prayer made by the petitioner and the respondents. The auction purchaser represented by Shri Brijesh Kumar Shukla may also seek his remedies in the appropriate forums.

20. The farmers are represented by the Cane Commissioner, U.P. The Standing Counsel has requested for adjournment to find out the exact amount of dues for the relevant year, to be appropriated from the deposits in the Court. We do not propose to grant any further time and to find out the amount, which is still due to the cane growers, who may be entitled apart from the remaining amount, the interest payable on the delayed payments under the Act.

21. We find it appropriate to direct the Registrar of the Court to remit the entire amount available with him in this writ petition to the Cane Commissioner U.P. at Lucknow. The Cane Commissioner, U.P. at Lucknow will work out the dues, which are still payable by the company. It will be open to M/s Indo Gulf Industries Ltd. (Sugar Division) to make an appropriate representation giving details of its claims to the Sugar Commissioner, U.P. We expect Sugar Commissioner, U.P. that the claims of the company as well as any other claims, which may be filed with him, may be considered by him by making a reasoned order very expeditiously and if possible within a month of the service of the certified copy of this order in his office.

22. The writ petition is disposed of with these directions.