(2009) 03 AHC CK 0170

In the Allahabad High Court

Bajaj Hindusthan Limited and Another — APPELLANT

Vs

State of U.P. and Others
D.C.M. Shriram Industries Limited Vs The Cane Commissioner and Others — RESPONDENT

Date of Decision : 18-03-2009

Acts Referred:

Citation : (2009) 03 AHC CK 0170

Hon'ble Judges : Shabihul Hasnain, J;Pradeep Kant, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Pradeep Kant, J.—These are two writ petitions challenging the same order dated 26.12.2008, passed by the Cane Commissioner, U.P., reallocating certain cane purchase centres to different sugar mills.

2. Bajaj Hindusthan Limited, a company, having its sugar mills at Kinauni (District Meerut), hereinafter referred to as the petitioner, is involved in the manufacturing of white crystal sugar through vacuum pan process having crushing capacity of 12000 TCD.

3. The petitioner has filed writ petition No. 316 of 2009 (M/B) raising a grievance that its 90 cane purchase centres, have been reserved/assigned to different sugar mills, who have been arrayed as respondents in the petition and also that the 12 cane centres, which have now been reserved/assigned to the petitioner sugar mill are in fact not available to the petitioner as liberty has been given to the unwilling cane growers on the mill gate, not to supply their sugarcane to the petitioner, but to the other sugar mills.

4. M/s D.C.M. Shri Ram Industries Limited, New Delhi, hereinafter referred to as the respondent, has filed the other writ petition No. 343 of 2009 (M/B) challenging the reservation/assignment of aforesaid 12 cane purchase centres in favour of the petitioner, which according to them were rightly allocated to the respondent in the original reservation order passed by the Cane Commissioner.

5. The petitioner felt aggrieved by the original reservation order passed by the cane Commissioner dated 3.11.2008 and as such it challenged the order aforesaid in writ petition No. 10255 of 2008 (M/B), which was dismissed by the High Court on 17.11.2008 on the ground of availability of statutory remedy of appeal u/s 15(4) of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953, hereinafter referred to as the Act, 1953, with the direction that the State Government shall decide the appeal within three weeks and consider the interim relief application without any delay.

6. In pursuance of the aforesaid order, the petitioner preferred an appeal before the State Government and leaving aside the proceedings which had taken place in appeal at interlocutory stages, the interim relief application was rejected by the appellate authority, which order was challenged by the petitioner by filing a writ petition, but the writ petition was withdrawn, as in the meantime, final order was passed by the State Government in appeal, remanding the matter to the Cane Commissioner with the direction that he shall take into account the issues raised and take a fresh view on an urgent basis.

7. The petitioner preferred writ petition No. 5959 of 2008 (M/B) before the High Court showing dissatisfaction on the said order of remand passed by the appellate authority and thus denying any effective relief to the petitioner, but the said writ petition was dismissed by the High Court on 18.12.2008 with the direction that the Cane Commissioner may pass appropriate reservation order in accordance with Section 15(1) of the Act, 1953 and the U.P. Sugarcane (Regulation of Supply and Purchase) Rules, 1954, hereinafter referred to as the Rules, 1954, positively by 31.12.2008 after affording an opportunity to all parties.

8. The High Court also directed that the order of reservation with regard to 90 disputed cane centres assigned to other units would be kept in abeyance and that the Cane Commissioner would take into consideration the sugarcane already lifted from these 90 disputed cane centres since 3.11.2008 by other units.

9. It is after the aforesaid order of the High Court that the Cane Commissioner has passed the fresh order on 26.12.2008, impugned in the present petitions.

10. According to the petitioner, the Cane Commissioner has not decided the controversy in accordance with law and passed the order on mere surmises and conjectures and on considerations which cannot be said to be relevant, ignoring the basic principles of reservation/assignment of cane purchase centres, which action is per se arbitrary and illegal and has resulted into unequal distribution of sugarcane amongst the sugar mills, affecting the crushing capacity of the petitioner sugar mill and virtually giving to the petitioner sugar mill a closure much before the crushing season ends.

11. Before proceeding to deal with the issues raised, it would be pertinent to mention that a plea of alternative remedy being available against the impugned order of the Cane Commissioner was vehemently raised by the respondents, saying that in view of Section 15(4) of the Act, 1953, the present order is also

appealable and, therefore, the writ petition would not lie.

12. This plea has been forcefully refuted by the petitioner urging that the appeal, in the facts and circumstances of the case, is not an appropriate remedy and that the petitioner having once availed the said remedy with no fruitful result, cannot be relegated to the same statutory forum again and again for the same relief and for redressal of the same grievance.

13. Various case-laws have been cited by the petitioner on the plea that even if there is a statutory alternative remedy of appeal, it cannot be a bar in entertaining the writ petition and that it is the discretion of the Court either to straightaway entertain the petition or to relegate the petitioner to the alternative forum. It has also been emphasized that the conduct of the Cane Commissioner and that of the appellate authority is not free from bias and that it is under the political influence that the petitioner has been discriminated and, therefore, the alternative remedy is wholly illusory.

14. On the plea of mala fides of the Cane Commissioner or his bias or any political pressure being exercised on the appellate authority, suffice it to mention that there are no pleadings at all worth the name in the writ petition in this regard. Vague assertions made also do not make out any case of bias or undue influence being exercised upon the statutory authorities, nor there appears to be any mala fides on the part of the Cane Commissioner in making the reservation order aforesaid.

15. So far as the plea of alternative remedy of appeal is concerned, it cannot be disputed that alternative remedy is not an absolute bar in entertaining a writ petition. It depends upon the facts and circumstances of each and every case which persuades and guides the High Court either to entertain the petition or to relegate the person aggrieved to the alternative forum.

16. We do not find it expedient to burden the judgment with various cases cited, as the principle of entertaining a writ petition in the presence of alternative remedy does not require any detailed discussion, it being the settled principle of law that there cannot be any hard and fast rule in entertaining a writ petition in the presence of an alternative remedy.

17. In the instant case, the petitioner, being aggrieved by the original reservation order dated 3.11.2008, filed a writ petition before this Court, which was not entertained and the petitioner was relegated to the alternative remedy of appeal. The grievance against the original reservation order was almost the same, which is the grievance against the present reservation order, with minor change with respect to 12 cane purchase centres.

18. The petitioner has urged that while making the original reservation order, the allotment of cane purchase centres was done without taking into consideration the estimated requirement of the petitioner, as notified u/s 12 of the Act, 1953. According to the petitioner, the Cane Commissioner has passed a highly

disproportionate and arbitrary order while reserving or assigning the cane purchase centres. It was the specific case of the petitioner that as against the estimated requirement of 189.44 lac quintals of sugarcane, the total sigarcane allotted to the petitioner was only 150.79 lac quintals, which was much below the required quantity of sugarcane for running the sugar mill for the entire crushing season. It was also the case of the petitioner that 90 cane purchase centres have wrongly been reserved/assigned to other units and the petitioner was entitled to those cane purchase centres.

19. Further the case of the petitioner was that keeping in mind and assuming that there was shortage of sugarcane this year, the proportionate reduction should have been done in the matter of allotment of sugarcane areas with respect to all sugar mills but the same has not been done, as the respondent sugar mills have been given excessive areas, where sugarcane is available in much more quantity as against their estimated requirement and that though reduction has been made in some cases also but not like the one which has been made in the case of the petitioner, where the cane purchase centres have been reserved/assigned in a manner that it does not even fulfill the basic requirement as estimated u/s 12 of the Act.

20. The submission is that if there was shortage of sugarcane, then reduction of the sugarcane area should have been done proportionately on a rational basis, so that all the sugar mills might have been dealt with without any discrimination and that sugarcane could have been available to all the sugar mills making its distribution just and fair. The petitioner did file an appeal against the aforesaid reservation order of the Cane Commissioner, but the appellate authority, instead of deciding the dispute at its own level, after making some observations here and there, remanded the matter again to the Cane Commissioner.

21. A perusal of the appellate order reveals that the appellate authority did find that there was shortage of sugarcane to the petitioner sugar mill and that the matter required redetermination by the Cane Commissioner, but then without recording any finding on the issues involved, left the matter open to the Cane Commissioner for deciding the controversy keeping in mind Rule 22 of the Rules, 1954.

22. The appellate authority made an observation that the Cane Commissioner has allotted the sugarcane area to the sugar mills keeping in mind the average yield of sugarcane, which shows that the sugar mills in the districts have been allotted sugarcane area keeping in mind their requirements of sugarcane. It further reveals that the petitioner has been allotted sugarcane less than the required quantity and the other sugar mills have been allotted excess sugarcane.

23. The appellate authority also observed that for crushing season 2008-09 as per the policy, the drawl rate was expected to be 60 to 70%, but the reservation order has not been passed on the basis of said drawl rate and, therefore, allotting sugarcane to the petitioner at a drawl rate of 125% was not proper.

24. The appellate authority held that in view of the re-allotment made by the Cane Commissioner, wherein sugarcane area earlier allotted to the petitioner, has been allotted to other sugar mills, if any intervention is made, it will result in chain reaction and would affect the entire region of Meerut and the whole scheme of allotment.

25. The appellate authority also took into consideration the fact that there was a lot of resentment amongst the cane growers and their societies in supplying sugarcane to the petitioner sugar mill because of its past conduct in previous crushing season, where the cane growners were not paid the cane price and hence they were not willing at any cost to supply sugarcane to the petitioner.

26. The appellate authority also observed that if there is shortage of sugarcane, the petitioner can approach the Cane Commissioner for additional allotment of the area.

27. After making the aforesaid observations, the appellate authority remanded the matter to the Cane Commissioner for reconsideration of the matter keeping in mind Rule 22 of the Rules, 1954.

28. The Cane Commissioner, on his turn, though almost reiterated the view taken by him in the original reservation order giving same reasons for not allotting the 90 cane purchase centres as per estimated requirement but made some modification in the original reservation order by reserving/assigning 12 cane purchase centres to the petitioner and at the same time giving discretion to the cane-growers, who were not willing to supply their sugarcane to the petitioner, to supply it to other mills, where they wished to do so.

29. In the facts and circumstances of the present case, it is clear that the petitioner had been asked to avail statutory remedy of appeal once against the order of reservation, where all these pleas were to be considered and a final order was to be passed. The State Government after expressing its view had remanded the matter and on remand, the present reservation order has been passed which virtually raises the same pleas again alongwith the additional plea in respect of the choice of cane growers of 12 cane centres which have been reserved/allocated to the petitioner under the impugned order, to supply their sugarcane to the sugar mill where they want to do so.

30. Crushing season starts from 1st October and ends on 15th July every year. The sugarcane available in the area is to be crushed and utilized during the relevant crushing season. The litigation in such circumstances cannot be allowed to linger for an indefinite period, as it defeats the very object of redressing the grievance against the reservation order. It is, therefore, desirable that a time-bound programme should be adopted in the matter of deciding the appeals, as far as possible. The appellate authority is obliged to decide the controversy and the issues raised finally unless of course it becomes very essential and necessary and for that matter, to remand the matter to the Cane Commissioner, but while doing so, necessary appropriate guidance or instructions need be given. In case

of a sugar mill, which is facing or which apprehends shortage of sugarcane in the mid of crushing season because of illegal or arbitrary reservation order, it cannot be left in the wilderness of alternative forum so as to negate the whole exercise and by the time the matter is decided by the statutory authorities, the crushing season comes to an end or the sugar mill faces closure because of the shortage of sugarcane.

31. It is also to be kept in mind that when once the appellate authority expresses its views on the issues raised against the reservation order and after remand, the same issues are again in question, it may not be very useful for the litigating parties to send them to the statutory forum of appeal, where the views of the appellate authority are known.

32. It may be clarified that against the modified order of reservation passed by the Cane Commissioner u/s 15 (1) of the Act, 1953, appeal would lie and looking to an individual case, the aggrieved party can be relegated to the remedy of appeal even again, but there may be circumstances which may pursue the High Court to entertain the writ petition straightaway. Needless to reiterate that the High Court will test each and every case on its own facts while considering the plea of alternative remedy.

33. Considering the facts and circumstances of the present case, where on the face of it, the original reservation order has been passed by the Cane Commissioner against the principles enunciated in the case of Govind Nagar Sugar Ltd. Vs. State of U.P. and others, i.e. ignoring the basic estimated requirement as notified u/s 12 of the Act, 1953 and the petitioner having been relegated to statutory remedy of appeal once, where all the pleas as aforesaid alongwith other pleas were in issue and the appellate authority having remanded the matter to the Cane Commissioner and also looking to the fact that crushing season is coming to an end, we do not find it necessary, on the facts of the present case, to relegate the petitioner to alternative remedy of appeal once again. That being so, we overrule the preliminary objection of the respondents that the petition is not entertainable, as the petitioner has an alternative remedy of appeal u/s 15(4) of the Act, 1953.

34. On merits, lengthy arguments have been advanced from both the sides challenging and defending the order passed. The main plea, which has been strongly urged, is regarding the reasoning which precluded the Cane Commissioner to make allotment of adequate sugarcane area to the petitioner to meet the estimated requirement, namely, the resentment of cane growers and cane societies against the petitioner, as it deliberately did not make the payment of cane price to the cane growers during the entire past crushing season.

35. The argument of the petitioner is that in the previous crushing season, there was litigation with respect to State Advised Price i.e. S.A.P as determined by the State Government. Various writ petitions were filed, both at Lucknow and Allahabad, challenging the said S.A.P. The petitioner preferred a writ petition at

Allahabad, whereas a group of sugar mills filed writ petitions at Lucknow. Interim orders were passed at Lucknow requiring all the sugar mills to make payment of sugarcane price at the rate of Rs. 110/- per quintal to the sugarcane growers, but the petitioner did not adhere to the interim orders and on the basis of a subsequent interim order passed at Allahabad, it stuck to pay price at the rate of Rs,80/- or so per quintal. Not only this, the petitioner also deducted the transportation charges, which were not permitted under the interim orders passed at Lucknow.

36. Explaining the aforesaid facts, it has been submitted that not only the petitioner, but almost all the sugar mills in the State could not pay price of sugarcane to the cane growers within time because of litigation and, therefore, the ground raised in the order of reservation about the discontentment of cane growers against the petitioner and their unwillingness to supply sugarcane to the petitioner was firstly not a relevant consideration in the prevailing circumstances and secondly, the petitioner had also made the entire payment though belatedly and also that the cane growers cannot be granted liberty nor the sugar mills can be left on the mercy of the cane growers in the matter of supply of sugarcane who are bound to supply sugarcane to the sugar mills where they are attached through their societies, namely, the cane purchase centres.

37. A perusal of the orders passed by the Cane Commissioner, namely the orders dated 3.11.2008 and 26.12.2008 makes it crystal clear that the Cane Commissioner did take into consideration the discontentment and resentment, specifically and explicitly shown by the cane growers and their societies and their unwillingness to supply their sugarcane to the petitioner for the reasons aforesaid and the reasons given in the orders themselves.

38. It was on record that the cane societies did pass specific resolutions for not supplying sugarcane to the petitioner sugar mill because of its own attitude and that not only this, it has also been mentioned by the State that there was protest and Dharnas against the allotment of sugarcane of these unwilling cane societies to the petitioner sugar mill, who gave out that they will prefer to burn their sugarcane, instead of supplying it to the petitioner sugar mill.

39. We need not go into the details of these agitations and resentments shown by the cane growers and cane societies in the matter of supply of their sugarcane to the petitioner nor do we intend to delve upon the justification of such resentments but the fact that cannot be ignored is that if a sugar mill deliberately or otherwise does not make payment of cane price to the cane growers, who keep on supplying their sugarcane to a sugar mill, it would adversely affect not only the interest of cane growers but would also have far-reaching effects leading the marginal cane growers to the verge of starvation. A sugar mill cannot expect that a cane grower who depends upon the price paid for the cane supplied for carrying on his livelihood and maintaining his family, would keep on supplying the sugarcane under the reservation orders to a particular sugar mill, who had not been reasonably just and fair in the payment of cane

price to him.

40. The scheme of the Act, 1953 itself provides a maximum period u/s 17, during which period the cane price should be paid, failing which the sugar mill is rendered liable for strict action including launching of criminal prosecution against it.

41. These provisions have been made only to ensure that cane growers, who supply their sugarcane to a mill, do get the adequate price as determined by the State government well in time and they are not left on the mercy of sugar mills who, on the one hand carry on with their commercial activities of manufacturing sugar and selling it and on the other hand, deliberately avoid payment of the raw material supplied to them by the cane growers. If any sugar mill fails to make payment of cane price in accordance with law, such a resentment, as mentioned above, is natural and is bound to happen.

42. It is for every sugar mill to see that the rules in regard to payment of cane dues are followed strictly so that such discontentment and resentments do not create a situation which becomes ugly, adversely affecting the running of sugar mill and also putting the cane growers in a difficult spot, so that their produce does not go waste and they are not compelled to search another sugar mill or crushers where they expect that the price of their sugarcane would be paid in time and they would not be victimised in any manner.

43. The Cane Commissioner has dealt with the aforesaid issue and has also found that even the two cheques, said to have been issued by the petitioner towards the cane price, were dishonoured for want of funds which were to the tune of rupees twenty one crores. That being the situation, it cannot be said that the Cane Commissioner was not fair in asking the cane growers to supply their sugarcane to other sugar mills, where they wished.

44. There is, however, no specific finding that the Cane Commissioner was willing to allot sugarcane area to the petitioner as per the estimated requirement u/s 12 of the Act, 1953, but the cane growers and the cane societies of that area had since declined to supply sugarcane to the petitioner; therefore, that area was reduced.

45. However, a general allegation of discontentment amongst the cane growers or their societies would not be sufficient to divert the sugarcane of the petitioner sugar mill to any other sugar mill unless of course it is found beyond reasonable doubt that if such an allotment is made, there would be no supply or the sugarcane shall be diverted or wasted. The Government machinery cannot act on fancies or whims either of the sugar mill or of the cane growers or their societies, as it is the prime responsibility of the Cane Commissioner and district authorities to see that the sugar cane area so allotted is made accessible to the sugar mill to which these cane purchase centres have been reserved or assigned and for that matter, they have to maintain law and order to facilitate smooth flow and supply of sugar cane to the sugar mill. Steps can be taken to ensure the payment of

cane price in time and also uninterrupted supply of sugar cane to the sugar mill. Balance has to be struck and homogeneity is to be maintained between the supply and the purchase of sugar cane and payment to cane growers, which again is the responsibility of State functionaries and also of the sugar mill and the cane growers. The provisions of the 1953 Act and the Rules framed thereunder are to be given full effect by the concerned authorities.

46. From the record and the various orders passed by the Cane Commissioner as well as the appellate authority, it clearly reveals that there was shortage in sugarcane yield this year and, therefore, the sugar mills were to be allotted sugarcane area keeping in mind the expected yield of sugarcane and looking to the drawl rate which could not exceed 50 to 60% by any means. So far as the petitioner is concerned, the Cane Commissioner allotted sugarcane area by taking drawl rate of 125%, which was highly excessive and impracticable.

47. The requirement of sugarcane for a particular sugar mill and consequent allotment of sugarcane area for meeting such requirement, keeping in mind the provisions of Rule 22 of the Rules, 1954 and other relevant factors, namely, past conduct of sugar mill in the matter of payment of price of sugarcane to the cane growers, are some of the basic features which always have to be kept in mind by the Cane Commissioner while making the reservation/assignment order, otherwise it would defeat the very purpose of the scheme as given in the Act, 1953, in the Rules, 1954 and in the relevant Control Orders.

48. Needless to reiterate that the Cane Commissioner while passing the original reservation order is obliged to see the estimated requirement of the sugar mill as determined u/s 12 of the Act, 1953 and such requirement is to be made the basis for allocation of sugarcane area. It is to be seen that the sugarcane area allotted is sufficient for meeting the basic requirement and in case there is shortage of sugarcane in the entire district/area, then proportionate reduction has to be made looking to the capacity of the sugar mill, its past crushing capacity and all other factors which are necessary for the purpose.

49. Undisputedly, the requirement of the petitioner as estimated u/s 12 of the Act, 1953 was 189.44 lac quintals, but the petitioner has been allotted only an area supplying 150.79 lac quintals. If the drawl rate of 50 to 60% is applied, that will show that the allotment has been made of a very less area as compared to notified requirement.

50. Learned Additional Advocate General Sri J.N.Mathur as well as learned Counsel for the petitioner Sri Virendra Bhatia and learned Counsel for the respondents, however, suggested and do agree that looking to the fact that the crushing season is coming to an end and the respondent sugar mills have already lifted their sugarcane from the area allotted, it would be sufficient to clarify that the reasons given by the cane Commissioner and findings recorded and also the observations made by the appellate authority and the High Court in the orders passed in earlier writ petitions filed against the remand order are not to be taken

as final, nor as a precedent while passing the reservations orders in the subsequent crushing seasons.

51. We also take notice of the fact that the petitioner sugar mill as well as the respondent sugar mills have been working under the reservation order passed by the Cane Commissioner and if at this belated stage, the reservation order is modified or set aside for redetermination of any sugarcane area, it would not be an effective relief to either of the parties and rather, it would affect the various sugar mills in on-going crushing season.

52. We do, however, observe that in view of the principles of law laid down in the case of Govind Nagar Sugar Ltd. (supra), every sugar mill including the petitioner, irrespective of original reservation order and the sugarcane area allotted, is always at liberty to approach the Cane Commissioner, if it finds that it is facing or is likely to face shortage of sugarcane during the mid crushing season and if no additional sugarcane is made available, it will soon reach the status of ''no cane'' for allotting additional sugarcane from the reserved or assigned area of any other sugar mill, where it is viable to divest some of its sugarcane.

53. Another plea regarding the allocation of 12 cane centres to the petitioner and then allowing cane growers of the area, who do not wish to supply their sugarcane to the petitioner, to supply their sugarcane to different sugar mill, has though been raised, but in view of the fore-going discussions, we do not find it necessary to embark upon this issue also in the present position.

54. Since we are of the considered opinion that no useful purpose would be served in case any further modification is made in the reservation order passed by the Cane Commissioner at this belated stage of crushing season, we, therefore, conclude by holding that the findings recorded by the Cane Commissioner in the matter of allocation of sugarcane areas for the present crushing season in respect of the petitioner sugar mill as well as the respondent sugar mills shall have no binding precedent and shall not be taken as a guidance or example for the subsequent crushing seasons. Every crushing season is a new season and, therefore, the Cane Commissioner would consider the question of reservation/allotment of cane centres in respect of all the sugar mills as per the requirement of law and as per the rules while passing the reservations orders for the subsequent years.

55. Before parting, we would like to re-emphasize that under the scheme of the Act, 1953 and the Rules made thereunder alongwith Control Orders, it is the basic requirement that every sugar mill is provided with adequate quantity of sugarcane so that it functions for full crushing season as far as possible and while doing so, it is obligatory upon the Cane Commissioner and the State authorities to see that there is smooth supply of sugarcane to the concerned sugar mill without disturbing the other sugar mills or their crushing capacity during the entire season and that the interest of the sugar mills in the vicinity and of the cane growers and their societies is protected.

56. Both the writ petitions are disposed of accordingly.