

(2014) 02 P&H CK 0086

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 303 of 2014 (O and M)

Batala Cooperative Sugar Mills Limited

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 21-02-2014

Acts Referred:

Essential Commodities Act, 1955 — Section 3 3(3-C)

Citation : (2014) 02 P&H CK 0086

Hon'ble Judges : Sanjay Kishan Kaul, C.J.;Arun Palli, J

Bench : Division Bench

Advocate : Vikas Singh, for the Appellant;

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, C.J.—These four appeals call in question a common order of the learned single Judge dismissing the writ petitions of the appellants and hence the appeals are being disposed of by one single order. The appellants before us are all sugar mills which seek to raise the issue of determination of levy sugar price under the Sugar (Price Determination for 1972-73) Production Order, 1972.

2. The dispute has had a chequered history. It is vide CWP No. 780 of 1973 and other connected matters that the issue of levy price was raised. The matters were taken up together and vide the orders dated 19.1.2001 were dismissed on the sole ground that they were covered by two decisions of the Supreme Court in M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others, and Shri Malaprabha Co-op. Sugar Factory Ltd. Vs. Union of India and Another, . All the petitioners preferred LPAs which were decided vide the main order passed in LPA No. 1956 of 2001 on 12.8.2010. The Division Bench considered all the aspects of the matter in a detailed judgment and did not find anything in favour of the appellants. The operative paragraph-21 is as under:-

21. Thus, though we are of the view that no particular point has been shown to us which may justify interference with the fixation of price under the impugned

order, learned counsel for the appellants stated that in absence of proper instructions from his client, he could not raise some of the points which he could have raised if he had all the instructions. Learned counsel for the respondents was also unable to properly assist the court for want of instructions as stated by him. Order of stay has been operative for the last almost 37 years. We do not find any ground to further adjourn the matter to enable the counsel to seek instructions. Number of adjournments have already been granted. Still, while closing the matter as far as this court is concerned, we consider it proper to give indulgence to the appellants to make a representation to the Secretary, Ministry of Agriculture (Department of Food) who may consider the same and pass an appropriate order dealing with the points which may be raised within three months from the date of receipt of the said representation and a copy of this order. Interim order granted by this Court which was continued during pendency of these appeals will continue till such an order is passed. On passing of such an order, interim order so granted will cease to operate, subject to such order that may be passed on the representation.

3. A perusal of the aforesaid shows that the controversy of the fixation of levy sugar price was put to an end so far as judicial adjudication was concerned by observing "closing the matter as far as this court is concerned", but for some reason another indulgence was shown to the appellants, to be able to obtain some relief administratively, if they were so advised, by making a representation. It is this liberty which has started a second round of litigation.

4. The appellants made representations which have again been dealt with by a detailed order of the Secretary (Food & Public Distribution) dated 8.8.2011. An issue which was sought to be raised through these representations was of the State administered price for sugarcane fixed by the State Government which, according to appellants, is a factor required to be taken into account by fixing the levy price. This aspect has been dealt with in para-18 of this order. It is relevant to reproduce paragraphs 18 to 20 as under:-

18. M/s. Malwa Sugar Mills (now Cosmos Industries Ltd.) have referred to the judgment dated 22.9.1993 in the case of Malaprabha Cooperative Sugar Factory Ltd. and judgment dated 31.3.2008 in the case of Mahalakshmi Sugar Mills Company Ltd. of Hon"ble Supreme Court to justify taking into consideration of the actual price of sugar cane in the determination of the price of levy sugar for the year 1972-73. The said judgments are not applicable to the levy sugar prices for the year 1972-73 since the Malaprabha judgment dated 22.9.1993 was concerned with fixation of price for the years 1974-75 to 1979-80 only by taking into consideration the additional price of sugarcane under clause 5A of the Sugarcane (Control) Order, 1966. The said clause 5A was inserted in the Sugarcane (Control) Order 1966 with effect from 1.10.1974 only and, therefore, is not relevant to the prices of sugarcane for the sugar season 1972-73. Further, Hon"ble Supreme Court had specifically directed the Central Government to re-fix the prices of levy sugar for the sugar years 1974-75 to 1979-80 and not

passed any orders with regard to appeals pertaining to other sugar years disposed of through the said judgment dated 22.9.1993, the parties representing, therefore, cannot claim any benefit from the decision of Hon''ble Supreme Court in the case of Malaprabha Co-operative Sugar Mills. Similarly, no benefits can be claimed by the parties representing on the basis of judgment dated 31.3.2008 of Hon''ble Supreme Court in the case of Mahalakshmi Sugar Mills Co. Ltd. since parties representing were not a party to the said case. Hon''ble Supreme Court while laying down the law for the future had kept the direction confined only to the parties before the Court including the interveners. The said case was applicable to the sugar years 1983-84 and 1984-95 only.

19. The issue pertaining to the prices of levy sugar for the year 1972-73 is now almost 37 years old and the prices notified by the Order of 1972 have already received general acceptance of the sugar industry. In view of this also, it is not considered appropriate to re-open this issue, particularly in view of the following observations which have been quoted by the Hon''ble Supreme Court in their judgment dated 22nd September, 1993 in the case of Malaprabha Cooperative Sugar Factory Ltd. and also the subsequent judgment dated 31.3.2008 of the Supreme Court in the case of Mahalakshmi Sugar Mill Company Ltd.:-

The courts now recognize that the impact on the administration is relevant in the exercise of their remedial jurisdiction. Quashing decisions may impose heavy administrative burdens on the administration, divert resources towards re-opening decisions, and lead to increased and unbudgeted expenditure. Earlier cases took the robust line that the law had to be observed, and the decision invalidated whatever the administrative inconvenience caused. The courts nowadays recognize that such an approach is not always appropriate and may not be in the wider public interest. The effect on the administrative process is relevant to the courts'' remedial discretion and may prove decisive.

20. The Central Government while determining the price of levy sugar for the sugar season 1972-73 had given due consideration to the factors mentioned in sub-section (3C) of section 3 of the Essential Commodities Act 1955 like increase in the minimum price of sugarcane, incidence of cooperative societies commission, weighted average recovery and weighted average duration based on estimates obtained from factories for the 1972-73 season, escalations recommended by the Tariff Commission and the incidence of additional bonus. The Central Government had also taken into account a higher amount in consideration as return on the capital employed. The prices had, therefore, been determined strictly in accordance with the provisions of subsection (3-C) of section 3 of the Essential Commodities Act, 1955. In view of this and position stated hereinbefore, the representations filed by sugar mills for revision of the prices of levy sugar for the sugar year 1972-73 cannot be accepted. The sugar mills are directed to immediately pay to the Central Government the excess price realized in terms of the interim order of Hon''ble High Court of Punjab and Haryana together with interest thereon, if not already done, under the Levy

Sugar Prices Equalization Fund Act, 1972.

5. A second round, thus, began by filing once again CWP No. 18816 of 2011 and other connected matters which have been dismissed by the learned single Judge vide a detailed order on 7.11.2013 running into 39 pages. It is this judgment which has been assailed before us in the present appeals.

6. The sole issue, which is sought to be raised before us by the learned counsel for the appellants, is that in view of the judgment of the Supreme Court in Mahalakshmi Sugar Mills Co. Ltd. and Another Vs. Union of India (UOI) and Others, additional price paid and the State Advisory Price (SAP) are factors to be taken into account while fixing the levy price for sugar. In the said judgment, the second question framed and examined was as to whether the Central Government while fixing the price of levy sugar u/s 3(3-C) of the Essential Commodities Act, 1955 (hereinafter to be referred to as "the EC Act") was liable to account for the SAP fixed by the State of U.P. and mandatorily required to be paid by the sugar manufacturer to the sugarcane grower. The Supreme Court opined that when the legislative policy reflected in a statutory provision, the Court, while being called upon to determine as to whether same has been complied with or not, must apply the rule of purposive construction. The absence of mention of SAP even if not specifically provided for in Section 3(3-C) of the EC Act was held not to preclude its consideration for determination of the levy price once it is found to be a relevant consideration for determination of such levy sugar price. However, in the operative paragraph-71, it has been clearly observed that this is a law laid down for the future and, therefore, while directing the Central Government to re-fix price of levy sugar, it would keep this direction confined only to parties before the Supreme Court including the interveners.

7. It is not as if the aforesaid judgment has not been dealt with by the learned single Judge in the impugned order but has been specifically examined and found distinguishable on facts. One of the aspects taken note of is that this judgment was rendered entirely on different set of facts involving the issue of determining the price of sugar for the years 1983-84 and 1984-85 while, in the present case, the issue involved is of fixing the levy sugar price for 1972-73 which has not been found contrary to the provisions of Section 3(3-C) of the EC Act and all relevant factors were taken into account.

8. On hearing learned counsel for the appellants, we are of the view that the judgment of the Division Bench of this Court in LPA No. 1956 of 2001 and connected matters, decided on 12.8.2010 had, in fact, put a closure to the issue of agitating the subject matter of levy price for 1972-73. Having done so, on a plea that proper assistance may not have been forthcoming, gave an indulgence to the appellants to make a representation to the Secretary, Ministry of Agriculture. This implies that, if at all, some relief had to be given, it could be only at the administrative level for which purpose the matter was so relegated. Unfortunately, the appellants even there did not succeed where a detailed order had been passed by the Secretary, the relevant portion having been extracted by

us hereinabove. There was really no question of any further judicial adjudication of the matter, but when the appellants approached the learned single Judge, a detailed judicial order has once again been passed.

9. Certainty to litigation and end to judicial proceedings are also essential for a proper administration of justice. It cannot be that the same issue in one form or the other is permitted to be raised again and again. This is what the appellants appear to be doing in the present case largely because there was an interim relief granted initially which appears to have continued thereafter. Thirty-seven years had been spent when the Division Bench put a closure to the matter in 2010.

10. The other aspect is that the judgment in Mahalakshmi Sugar Mills Co. Ltd. and Anr. case (supra), referred to aforesaid, itself makes it clear that while declaring the law, the benefits were confined to only the parties before the Supreme Court and the interveners while legal declaration would operate for the future. The appellants can hardly be permitted to take the benefit of such an order.

11. Lastly, on our query being raised as to whether the specific plea raised before us was ever urged or adjudicated in the earlier proceedings by reference to the order of the Division Bench dated 12.8.2010, it is conceded that this issue nowhere forms subject matter of adjudication.

12. For all the aforesaid reasons, we are not inclined to entertain the appeals. The appeals and applications for stay are accordingly dismissed.