(2014) 12 DEL CK 0238

In the Delhi High Court

Case No : LPA 609/2003

Bihar sugar mills Association — APPELLANT

Vs

UOI — RESPONDENT

Date of Decision : 24-12-2014

Acts Referred:

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

Citation : (2014) 12 DEL CK 0238

Hon'ble Judges : G. Rohini, C.J;P.S. Teji, J

Bench : Division Bench

Advocate : Jayant Bhushan, Sr. Advocate and Kumar Rajesh Singh, Praveen Kumar and Punam Singh, Advocate for the Appellant; Sanjeev Narula, Standing Counsel and Ajay Kalra, Advocate for the Respondent

Judgement

G. Rohini, C.J.—This appeal is preferred against the order of the learned Single Judge dated 08.05.2003 in W.P.(C) No. 2638/2002.

2. Aggrieved by the levy sugar price fixed for the sugar season 1974-75 vide notification dated 13.04.1999, the appellants/petitioners filed W.P.(C) No. 2638/2002 with a prayer to quash the said notification as well as the decision of the Government of India, Department of Food and Public Distribution vide letter dated 19.12.2001 thereby rejecting the request of the petitioner No. 1 to revise the levy sugar price for the sugar season 1974-75. The petitioners also sought a direction to the Government of India to fix the levy sugar price for the sugar season 1974-75 by taking into account the loss caused to the producers on account of the lower interim price dated 28.11.1974 so as to ensure that the producers secure the price in accordance with Section 3(3C) of the Essential Commodities Act, 1955 (for short ''EC Act'') for the entire production of the sugar in the year 1974-75. The said writ petition was dismissed by the learned Single Judge by the order under appeal. Hence, the present appeal.

3. The facts in brief are as under:-

4. In exercise of the powers conferred by Section 3(3C) of the Essential Commodities Act, 1955, the Government of India issued an Order called the Sugar (Price Determination for 1974-75 Production) Order, 1974 vide notification dated 26.11.1974 thereby determining and notifying the prices of the sugar payable to the sugar factories in respect of sugar produced by them during 1974-75. The validity of the said Order along with Orders for the years 1975-76 to 1979-80 was decided by the Supreme Court by judgment dated 22.09.1993 in the case titled Shri Malaprabha Co-op. Sugar Factory Ltd. Vs. Union of India and Another, (hereinafter referred to as ''Malaprabha - I''). The entire batch of cases was disposed of by the Supreme Court directing the Government of India to amend the Notifications taking into account the liability of the manufacturers under Clause 5-A of the Sugarcane (Control) Order, 1966 as regards cane price as well as the factors mentioned in Section 3(3C) of the EC Act, 1955. In pursuance thereof, Sugar (Price Determination for 1974-75 Production) Amendment Order, 1975 was issued by the Government of India by notification dated 22.02.1995 amending the earlier order and re-fixing the levy sugar prices. The said Notification was again challenged by the sugar factories by filing Interlocutory Applications being I.A. Nos. 5-6/1995 in C.A. Nos. 122-123/1981 in the Supreme Court. By order dated 28.01.1997 (hereinafter referred to as Malprabha - II) (1997 10 SCC 216) the said applications were disposed of directing a fresh notification to be issued after taking into consideration the payment promised to be made to the cane growers under Clause 5-A of the Sugarcane Control Order, 1966.

5. In pursuance of the said directions, the impugned Order i.e. Sugar (Price Determination for 1974-75 Production) Amendment Order, 1999 was made vide notification dated 13.04.1999 thereby re-fixing the prices of sugar for the sugar season 1974-75. Contending that the price determined by the said notification dated 13.04.1999 is incorrect and illegal since the price which is effective only from 12.07.1975 would not ensure return to the producers for the sugar stocks sold prior to 12.07.1975, the petitioner No. 1 and 8 Associations sent representations to the Ministry of Consumer Affairs, Food and Public Distribution, Government of India requesting to re-fix the price. The said representations were rejected by letter dated 19.12.2001 stating that since the notification was already upheld by the Supreme Court, there was no question of revising the levy sugar price upto 11.07.1975. Aggrieved by the same, the petitioners filed W.P.(C) No. 2638/2002 which was dismissed by the learned Single Judge by the order under appeal.

6. It is relevant to note that after the order dated 28.01.1997 passed in Malaprabha-II, Contempt Petition No. 400-401/1998 came to be filed before the Supreme Court by Indian Sugar Mills Association alleging non-compliance of the directions of the Supreme Court in Malaprabha-I and Malaprabha-II. Pending the said proceedings, levy sugar prices for the sugar seasons in question were re-fixed by the Government of India by Notification dated 13.04.1999. Having taken notice of the said Notification whereunder the revised levy price has been fixed

at a figure higher than that was determined earlier, the Contempt Cases were dismissed by the Supreme Court by order dated 16.11.2000 (hereinafter referred to as ''Malaprabha-III'') holding that the fixation of levy sugar price is in accordance with law and the directions given by the court have been complied with.

7. A perusal of the order under appeal shows that the contention of the petitioners that the levy sugar price fixed under the impugned notification should be directed to be paid for the entire sugar season but not w.e.f. 12.07.1975 was rejected by the learned Single Judge observing that there is nothing on record to suggest that while fixing the levy sugar price by the impugned notification dated 13.04.1999, the respondents had not taken into consideration the factors under Section 3(3C) of the EC Act and the losses which might have been suffered by the sugar mills by sale of sugar at the interim price prior to the fixation of final levy sugar price. The learned Single Judge also held that in view of the said order dated 16.11.2000 of the Supreme Court in Malprabha-III, the question about re-fixation of levy sugar price for the sugar season 1974-75 cannot be re-agitated.

8. Assailing the said order, it is vehemently contended by Shri Jayant Bhushan, the learned senior counsel for the appellants that the issue raised in the writ petition was never the subject matter of the proceedings before the Supreme Court. It is submitted by the learned Senior Counsel that the issue before the Supreme Court in the Contempt Petition was only as to whether the Government had complied with the directions in Malprabha-I and Malprabha-II while fixing the price for the various seasons in question and that the lapses that have been pointed out now in the writ petition which could not be agitated in the contempt petition have given rise to a fresh cause of action and, therefore, the learned Single Judge ought to have considered and decided the same on merits.

9. We have also heard Sh. Sanjeev Narula, the learned standing counsel appearing for the Union of India and perused the material available on record.

10. As we could see, the levy sugar price fixed for the sugar season 1974-75 as well as the other sugar seasons was challenged initially on the ground that the price fixed by the Government of India was not in terms of Section 3(3C) of the EC Act and Clause-5A of the Sugar Cane Control Order. In Malaprabha-I, the Supreme Court accepted the contention of the petitioners and accordingly directed the Union of India to amend the notifications taking into account the liability of the manufacturers under Clause 5-A as regards cane price and re-fix the price of levy sugar having regard to the factors mentioned in Section 3(3C) of the EC Act. It is relevant to note that so far as the sugar season 1974-75 is concerned, the interim price was fixed by Notification dated 28.11.1974. In Malaprabha-I, the Supreme Court declined to interfere with the said Notification observing that the same came to be issued before the new pricing policy was introduced.

11. In terms of the directions in Malaprabha-I, a fresh Notification dated

22.02.1995 came to be issued fixing the levy sugar price for the sugar season 1974-75 making it clear that the prices determined therein shall apply to all sugar delivered on or after 12.07.1975. The said Notification dated 22.02.1995 was again challenged resulting in the decision of the Supreme Court in Malaprabha-II. The challenge to the Notification dated 22.02.1995 was on the ground that the Government while re-fixing the levy sugar price, failed to include the element of additional cane price payable by the producers under Clause-5A of the Sugarcane Control Order, 1966 as directed in Malaprabha-I. The said contention was found favour with the Court and accordingly, the Government of India was directed to issue additional orders/notifications in terms of the earlier directions.

12. During the pendency of the Contempt Petition before the Supreme Court, the Notification dated 13.04.1999 came to be issued fixing the levy price for the year 1974-75 in terms of the directions in Malaprabha-II and it was contended by the petitioners therein/sugar mills that they were entitled to an increase in the levy price to the full extent of the amount paid under Clause-5A. Referring to the earlier decisions in Malaprabha-I and Malaprabha-II, the Supreme Court rejected the above said contention of the petitioners and dismissed the Contempt Petitions holding:

This Court in the aforesaid two decisions has said that the retention of 50 per cent is a factor which can be taken into consideration in determining the element (d) in Section 3(3C) of the Essential Commodities Act. The working statement given before us shows that this has been done, not to the extent as desired by the petitioners, but the result of this is that the levy price fixed at Rs.163.780 in respect of West U.P. has gone up to Rs.172.430. In our opinion, the said fixation is in accordance with law and the directions given by this Court have been complied with. Neither a case for contempt has been made out nor is there any justification, in our opinion, for giving any direction to the Government to refix the levy price under Section 3(3C) of the Essential Commodities Act.

(Emphasis Supplied)

13. The said conclusion of the Supreme Court in the Contempt Petition, according to us, is undoubtedly with regard to the correctness of the price determined under the impugned notification dated 13.04.1999.

14. The challenge to the impugned notification dated 13.04.1999 in the present petition appears to be primarily on two grounds, namely, (i) that the price ought to have been fixed for the entire sugar season and not from 12.07.1975 and (ii) that the losses suffered by the mill owners because of supplies made at the interim price prior to fixation of final levy price were not taken into consideration while fixing the price under the impugned notification w.e.f. 12.07.1975. Both the said contentions were rejected by the learned Single Judge observing that no grievance was ever made before the Supreme Court on the said grounds. The learned Single Judge was also of the view that the interference by this court is

unwarranted since it was categorically held by the Supreme Court that there was no justification to issue directions for re-fixation of the levy sugar price for the sugar season 1974-75.

15. Having given our thoughtful consideration to the controversy involved in the matter, we are unable to hold that the conclusion of the learned Single Judge suffered from any infirmity warranting interference.

16. At the cost of repetition, it may be stated that the grievance of the petitioners/appellants is that the Government while refixing the sugar price under the impugned Notification dated 13.04.1999 made the price effective only from 12.07.1975 i.e. for the sugar delivered on or after 12.07.1975 but not for the entire production during the sugar season 1974-75 and that the said fixation is against the principle of ensuring the fair return for the entire sugar produced in that season.

17. In other words, the contention is that as the re-fixed price has been made applicable with effect from 12.07.1975 only, the sugar factories had suffered a huge loss on the sale of levy sugar prior to the date based on the interim price fixed by Notification dated 28.11.1974. According to the appellants, the fact that the loss caused by the initial interim price was not compensated has been admitted by the Central Government in the counter affidavit wherein it has been stated that the final levy sugar price cannot be rectified at this stage because the detailed break-up of the levy sugar price notified by Notification dated 11.07.1975 is not available as the relevant record was lost in a fire in 1992. The contention is that these aspects were not gone into by the Supreme Court either in Malaprabha - I & II or the contempt petition decided on 16.11.2000 (Malaprabha-III).

18. We do not find substance in any of the above said contentions. The grievance that the fixation of the price was erroneously made effective from 12.07.1975 instead of covering the entire period of the sugar season of 1974-75 was admittedly not raised either in Malaprabha-I, II or III. It is observed that even under the Notifications dated 11.07.1975 (which was the subject matter of Malaprabha-I) and the notification dated 22.02.1995 (which was the subject matter of Malaprabha-II), the price of levy sugar was fixed with effect from 12.07.1975 only. While assailing the said notifications, the sugar mills never made any grievance that the price ought to have been fixed for the entire sugar season and not from 12.07.1975. Even in the Contempt Petition, such an objection was not raised. As a matter of fact, since the interim price fixed by the Notification dated 28.11.1974, which was valid upto 11.07.1975, was upheld by the Supreme Court in Malaprabha-I, it is not open to the petitioners to make any grievance that the fixation of the levy sugar price shall be for the entire sugar season 1974-75. As rightly held by the learned Single Judge, in view of the decision of the Supreme Court in Malaprabha-III upholding the Notification dated 13.04.1999, it is not open to the petitioners now to challenge the said Notification even on the ground that the losses suffered by the mill owners

because of supplies made at the interim price prior to fixation of final levy price were not taken into consideration. We also find force in the submission of the learned counsel for the Union of India that the price fixed under the impugned notification being in conformity with the provisions of Clause-5A of the Sugar Control Order and Section 3(3C) of the EC Act, the contention that the alleged losses suffered by the mill owners were not taken into consideration is untenable.

19. At any rate, since the conclusion in Malaprabha-III is binding on the appellants/petitioners, the learned Single Judge is justified in dismissing the writ petition.

20. For the aforesaid reasons, the appeal is devoid of any merit and accordingly the same is dismissed.