
(2007) 01 AHC CK 0112
In the Allahabad High Court
Case No : Writ Petition No.30 (M/B) of 2007

Chilwaria Sugars Private Limited, Chilwaria, District Bahraich	APPELLANT
Vs	
State of U.P.and Others	RESPONDENT

Date of Decision : 12-01-2007

Acts Referred:

Citation : (2007) 01 AHC CK 0112

Hon'ble Judges : Pradeep Kant, J and Ajai Kumar Singh, J

Final Decision : Allowed

Judgement

1. Heard the learned counsel for the parties.
2. The petitioner's Sugar Mill is aggrieved by an order dated 29.12.2006 passed by the Cane Commissioner, U.P. Lucknow by means of which he has passed an order in respect of Cane Purchase Centres, Dahaura, khairabazarI, KhairabazarII, KhairabazarIII, baundi, Chhayakunwa/Maraucha and Bahorikapur. The aforesaid centres which were assigned to the petitioner Sugar Mill have been allowed to be operated upon by the respondent No.5 Sugar Mill till the pendency of the appeal before the State Government.
3. These centres under the reservation/assignment order dated 8.11.22006, have been assigned to the petitioner Sugar Mill. The respondent Sugar Mill being aggrieved by the said assignment has already preferred the appeal before the State Government, which is pending consideration.
4. It is the case of the respondent Sugar Mill that on the own request made by the petitioner Sugar Mill that the said centres be allowed to be operated upon by the respondent Sugar Mill which is evident by the fact that the Cane Manager gave in writing that since the petitioner Sugar Mill was not in a position to crush the sugar cane to its capacity, therefore, the same may be allowed to be purchased by the respondent Sugar Mill, therefore, the said order has been passed.

5. Since the appeal against the aforesaid centres was pending before the appellate authority, therefore, the Cane Commissioner on the basis of the said request which was forwarded by the District Cane Officer, has passed the order in question and therefore, this order cannot be said to be an order without jurisdiction and the same cannot be challenged before this Court.

6. The cane growers have also approached the Cane Commissioner in this regard and that fact can also not be overlooked.

7. Shri Raghvendra Singh for the petitioner has submitted that though the petitioner disputes that the Cane Manager himself has written the letter of his own free will but says that it is under the influence of one M.L.A. (Shri Om Veer Singh) who has put his signature on the recommendation made by the District Cane Officer, even if such a letter has been written, the Cane Manager not being competent to make any such request, the Cane Commissioner could not have acted upon such a request.

8. The learned counsel for the respondents including the private respondents have not been able to indicate any provision under the Act or Rules framed therein where the Cane Commissioner has got any such power to pass interim order in favour of the contesting party during the pendency of the appeal. They also could not dispute that if at all any such request was to be made by the Sugar Mill, the same could have been made only by the occupier of the factory.

9. Shri Gaurav Mehrotra, though made an attempt to justify the order by relying upon the case in *Kisan Sahkari Chini Mills Ltd. v. State of U.P. and Others*, 2006 (2) ALJ 730 and the judgment in the case of *Govind Nagar Sugar Limited Walterganj, Basti and Others v. State of U.P. and Others*, 2001 ALJ 741, by arguing that the Cane Commissioner under Section 15(2) or under Section 16 at any point of time during the crushing season could pass any order which is in the interest of sugar factory for smooth and continuous supply of sugarcane and since the petitioner Sugar Mill was not in a position to crush the sugarcane to its full capacity, therefore, such an arrangement has been made which order cannot be said to be without jurisdiction.

10. *Govind Sugar Mill* is a case where the Court was concerned with the interpretation, scope, meaning and definition of provisions of Sections 12, 15 and 16 of the Act and the scheme of the Act with respect to reservation and assignment of cane purchase centres and not with the powers of the Cane Commissioner during period interregnum i.e. period when the appeal remains pending.

11. In the case of *Kisan Sahkari Chini Mills Ltd. (supra)*, the Division Bench considering the scope of Section 15(2) found that the power to make additional allotment or canceling the allotment or reallocating the centres at any time would only be available at any time during the crushing season, if there is some major change in the circumstances but the Cane Commissioner cannot exercise such power in a routine manner on his whims.

12. The aforesaid two judgments are not at all of any assistance to the respondent Sugar Mill.

13. Once the cane centers have been assigned to one Sugar Mill, namely, the petitioner and the aggrieved Sugar Mill, namely, the respondent Sugar Mill has challenged the said assignment in appeal then, if any interim order is to be passed that could have been passed only in appeal and not by the Cane Commissioner. The power of the Cane Commissioner ceases in respect of those centres wherein the controversy has been taken in appeal and, therefore, any modification, settlement or adjustment if the parties want to make, may be better advised to make such prayer where the appeal is pending and the appellate authority shall be competent to look into the matter while deciding the appeal.

14. The question as to whether the Cane Manager was competent to make such request is hardly relevant besides the fact that the M.L.A. who has put his recommendation was having no role in the matter in issue.

15. For the reasons stated above, we hold that the order dated 29.12.2006 passed by the Cane Commissioner (Annexure No.1) is wholly without jurisdiction and authority and cannot be sustained which is being quashed.

16. The writ petition is allowed.

17. We are informed that the appeal is pending before the appellate authority. We, therefore, direct that the appeal shall be decided expeditiously as there already exists a direction of the Court.

18. We would like to put on record, that the appellate authority shall not be influenced by the order passed by this Court in this case while deciding appeal, which is pending before him, and shall decide the same in accordance with law.

19. We further give liberty to the parties' counsel to appraise the text of this order to authorities concerned who will comply with the same, without insisting for a certified copy, pending its availability.

(Petition allowed)