
(1999) 07 AHC CK 0158
In the Allahabad High Court
Case No : C.M.W.P. No. 120 of 1999

D.C.M. Shriram Industries Ltd. and others	APPELLANT
Vs	
State of U.P. and others	RESPONDENT

Date of Decision : 09-07-1999

Acts Referred:

Constitution of India, 1950 — Article 19(1), 226
Industries (Development and Regulation) Act, 1951 — Section 18G, 18G(2), 18G(3)
Uttar Pradesh Sheera Niyam Adhiniyam, 1964 — Section 10, 10(1), 11, 17, 22

Citation : AIR 1999 All 373 : (1999) 4 AWC 2809 : (1999) AWC 2809

Hon'ble Judges : N.K. Mitra, C.J.; S.R. Singh, J

Bench : Division Bench

Advocate : Dinesh Dwivedi, for the Appellant; C.S.C. and Bharatji Agrawal, for the Respondent

Final Decision : Disposed Of

Judgement

N. K. Mitra, C. J. and S. R. Singh, J.—Petitioners are the owners of sugar factories. They have their own distilleries set up as an adjunct to their respective factories which they claim, have the capacity to consume the entire stock of molasses produced in their respective sugar factories. The gravamen of the petitioners weaves round certain directions issued by the Controller of Molasses that the petitioners have called out for challenge in the Instant petitions instituted under Article 226 of the Constitution. The reliefs except the reliefs that were sorted out as not pressed, are excerpted below :

(a) Pass on order along the lines of similar orders dated 8.12.1998 passed by this Hon'ble Court in the cases of Kesar Enterprises Ltd, v. State of U. P, and others, Civil Misc. Writ Petition No. 41665 of 1998 and Sir Shadi Lal Enterprises and others v. State of U. P, and another, Civil Misc. Writ Petition No. 33748 of 1998 and to permit the petitioners to sell or captivity consume the said molasses without further reference to the Controller of Molasses.

(b) Pass an order directing respondent No. 2 to permit the petitioner to utilise

the molasses manufactured by them for the purpose of distilleries of the petitioners and in the alternative as free sale molasses.

(e) Issue a writ and/or order in the nature of certiorari calling for the records of the case, and

(ii) Quash the provisions of para 3 of the order dated 7.4.1998 Issued by the Controller of Molasses to the effect that in the event that the price at which molasses is offered by Sugar factories to the Chemical Industries is higher than the market price, it would be deemed that the sugar factories are not willing to supply molasses to the chemical industries.

(f) Pass any such other or further order as this Hon'ble Court may deem fit and proper in the circumstances of the present case.

2. Paragraph 3 of the Order dated 7.4.1998 issued by the Controller of Molasses and Excise Commissioner, U. P., a bone of contention for the petitioner which is sought to be quashed, reads as under :

* * * * 3. Each sugar mill will ensure that the rates are not higher than the rates prevailing in the market In which case it will be construed that the sugar mills are not willing to supply the molasses to chemical units."

* * * *

3. We have heard Sri Rakesh Dwivedi. Senior Advocate appearing for the petitioners, the Chief Standing Counsel for the State authorities and Sri Bharatji Agarwal, Senior Advocate, appearing for chemical units (allottees of molasses) arrayed herein as party respondent Nos. 3 to 7.

4. The bottom line question that begs determination is as to what price should the occupiers of sugar factories charge from concerned chemical units for sale of the forty percent reserved quota of molasses u/s (1a) of the U. P. Sheers Niyamtran Adhiniyam, 1964 (In short the "Adhiniyam")? Should the price be commensurate with the "market price" or the "fair price"? who is clothed with the power to decide whether the price demanded by the occupier of a sugar factory for the sale or supply of the reserved quota of molasses to chemical units, is "high", "low" or "reasonably and rationally fair one? The Adhiniyam, it may be pointed out, has been enacted to provide in public Interest for the control of storage, gradation and price of molasses produced by the sugar factories in Uttar Pradesh and the regulation of supply and distribution thereof. To have a bird's eye view of the Adhiniyam, it may be stated that Section 3 of the Adhiniyam visualises that the State Government may, by notification in the Gazette, constitute advisory Board to advise in the matters relating to the Control of storage, preservation, gradation price, supply and disposal of molasses. Section 4 empowers the State Government to appoint a person to be the Controller of molasses for the purposes of exercising the powers and performing the duties of the Controller of molasses under the Adhiniyam and the rules made thereunder ; Chapter III of the Adhiniyam provides for preservation,

distribution and prices of molasses ; and Chapter IV deals with offences and penalties under the Adhiniyam ; Section 11 (Chapter IV) contemplates that whoever convenes any provisions of the Adhiniyam or rules or orders made and directions issued thereunder or willfully makes any false statement or submits any false return regarding any matter in respect of which" he is required under the Adhiniyam and the rules, orders or directions to give information shall, on conviction be punishable with imprisonment of either description which may extend to one year or fine which may extend to two thousand rupees or with both and in the case of continuing contravention, with additional fine which may extend to one hundred rupees every day during which the contravention continues after conviction for the first such contravention, Section 17 of the Adhiniyam enjoins a duty upon every occupier of a sugar factory and every person to whom the molasses are supplied by such occupier to maintain such register, records, instruments, furnish all such Information and returns relating to the production and disposal of molasses in such manner to such persons and by such dates as may by order be prescribed by the Controller and produce on demand by Excise officer not below the rank of a Sub-Inspector (Excise) register, records, documents, Instruments and chemical reagents which he is required to maintain under the provisions of the Adhiniyam or the rules or orders made there under, and Section 22 empowers the State Government to make rules to carry out the purposes of the Adhiniyam and such rules may provide for manner of sale and supply of molasses among other things. In exercise of powers so conferred the State Government have made the rules known as the "Uttar Pradesh Sheera Niyantaran Niyamawali, 1974 (In short "the Rules"). Since the submissions made across the bar weaves round the provisions of Sections 8 and 10 of the Adhiniyam the same are abstracted below for convenient reference.

"8. Sale and supply of molasses.--(1) The Controller may, with the prior approval of the State Government by order require, the occupier of any sugar factory to sell or supply in the prescribed manner such quantity of molasses to such person, as may be specified in the order, and the occupier shall, notwithstanding any contract, comply with the order.

"(1a) Notwithstanding anything contained in sub-section (1) the occupier of a sugar factory shall sell or supply forty per cent of the molasses produced in each quarter of a molasses year in the sugar factory to such chemical industries which are actual users of molasses and are granted licence under the United Provinces Excise Act, 1910 :

Provided that such quantum of molasses as is not required by the said chemical industries may be sold or supplied by the occupier of the sugar factory to any other unit which is actual user of molasses with the prior approval of the Controller."

(2) The order under sub-section (1):

(a) shall require supply to be made only to a person who requires It for his

distillery or for any purpose of industrial development.

(aa) may require the person referred to in Clause (a) to utilise the molasses supplied to him under an order made under the section for the purpose specified in the application made by him under sub-section (1) of Section 7A and to observe all such restrictions and conditions as may be prescribed.

(b) may be for the entire quantity of molasses in stock or to be produced during the year or for any portion thereof ; but the proportion of molasses to be supplied from each sugar factory to its estimated total produce of molasses during the year shall be the same throughout the State save where in the opinion of the Controller, a variation is necessitated by any of the following factors :

(i) the requirements of distilleries within the area in which molasses may be transported from the sugar factory at a reasonable cost;

(ii) the requirements for other purposes of Industrial development within such area ; and

(iii) the availability of transport facilities In the area.

(3) The Controller may make such modifications in the order under sub-section (1) as may be necessary to correct any error or omission or to meet a subsequent change in any of the factors mentioned in Clause (b) of sub-section (2).

* * * * (10) Maximum prices of molasses.--(1) The occupier of a sugar factory shall sell molasses in respect of which an order u/s 8 has been made (at a price not exceeding that prescribed in the Schedule) :

[Provided that the distilleries of potable alcohol which have been granted licence for wholesale contract supply of country liquor shall continue to be supplied molasses in respect of which an order u/s 8 has been made at a price not exceeding that" for the time being prescribed in the Schedule till March 31.1998.]"

5. An order u/s 8 (1a) of the Adhiniyam has the trappings of an order for compulsory sale In that the occupier of a sugar factory is bound to sell or supply 40% of the molasses produced in each quarter of molasses year in the sugar factory to such chemical Industries which are actual users of molasses and are granted licences under the United Province Excise Act, 1910, provided that such quantum of molasses as is not required by the said chemical industries may be sold or supplied by the occupier of sugar factory to any other unit which are the actual user of molasses with prior approval of the Controller. The question naturally arises as to what is the price to be paid to the occupier of the sugar factory for the compulsory sale of molasses under an order u/s 8 of the Act? According to Section 10, as it stood before Its amendment by Act, 1998, occupier of a sugar factory was peremptorily bound to sell/supply the molasses in respect of which an order u/s 8 has been made "at a price not exceeding that prescribed

in the Schedule." The expression "at a price not exceeding that prescribed in the Schedule" occurring in sub-section (1) of Section 10, has since been given adieu vide the notification dated 7th February, 1998. The necessary corollary. Is that now there exists no State controlled price in respect of the molasses to be sold or supplied by an occupier of the sugar factory to chemical units or such person as may be prescribed in the order u/s 8 of the Adhiniyam except to the extent comprehended by proviso to Section 10 (1) nor is there any mechanism in the Adhiniyam for determination of prices of the molasses. The prices are, therefore, bound to be controlled by the market. There is no denying the fact that molasses are of different grades depending on percentage of sugar contents of molasses (expressed as reducing sugar). The prices of each grade quality of molasses are therefore, bound to vary depending on the market situation. From Section 10 (1) of the Adhiniyam, it would be eloquent that price of molasses is now to be settled by mutual agreement. The Molasses Control Order, 1961 Issued by the Central Government in exercise of power conferred by Section 18G of the Industries (Development and Regulation) Act, 1951, which provides for a ceiling on the maximum prices on different grades of molasses is concededly not enforced in the State of U. P.

6. The question is, can the Controller Intervene and fix a price for sale of the molasses to Chemical units? According to Sri Rakesh Dwivedi, learned counsel appearing for the petitioners, once the State has chosen to lift the embargo in respect of price on sale of the molasses u/s 8 of the Adhiniyam the producers of molasses have the fundamental right to price their products and the Controller is not sanctified by any legal authority to intervene in the matter of price fixation by means of any executive order or direction particularly because of the reason that the price fixation is essentially a legislative function and the Executive cannot perform that function in the absence of any stipulation in that behalf with sufficient guidelines in the Act.

7. We have bestowed our thoughtful consideration to the questions raised by the learned counsel and we are of the firm view that the Controller in the instant case has not at all embarked upon any exercise of price fixation. Price fixation is one thing and issuing order prohibiting the sugar mills from selling the reserved quantity of molasses at rates higher than the rates prevailing in the market at a given time is altogether different. The former is usually a legislative function while the latter an administrative exercise undertaken to ensure that the provisions of the statute providing for compulsory sale of an essential commodity to a given sector is not defeated by the producer by demanding a price at a rate higher than the rate prevailing In the market. The object of para 3 of the order dated 7.4.1998 issued by the Controller is not to fix any price of molasses to be sold to Chemical Units. The price is in fact left to be controlled by the market. In our view, the object of para 3 of the Order dated 7.4.1998 is to ensure sale of the reserved quantity of molasses to Chemical Units by prohibiting the occupiers of Sugar Mills from demanding a price higher than that is prevailing in the market. Such direction issued by the Controller has the characteristic of an

administrative order and does not partake of the legislative character. On the question as to what is the nature of price fixation, the legal position well-settled is that it is usually a legislative function in *Union of India v. Syndicate India Limited*. (1987) 2 SC 720 however, a two Judge Bench of Supreme Court held as under:

"Price fixation may occasionally assume an administrative or quasi-judicial character when it relates to acquisition or requisition of goods or property from individuals and it becomes necessary to fix the price separately in relation to such individuals. Such situation may arise when the owner of property or goods is compelled to sell its property or goods to the Government or its nominee and the price to be paid is directed by the Legislature to be determined according to the statutory guide lines laid down by it. In such situations, the determination of price may acquire a quasi-judicial character. Otherwise price fixation is generally a legislative activity."

8. Under the Adhiniyam with which we are concerned in the instant case, the occupiers of sugar factories are in a way compelled to sell or supply the molasses produced in their sugar factories to allottee- chemical units to the extent of reservation and the State has although lifted the price control but enacted no provision as to what price should be paid to the occupiers for such "distress sale" nor does the Adhiniyam contain any provision visualising the mechanism providing for determination of price according to a set of statutory guidelines. In such view of the matter, the market will regulate the prices of molasses. We are therefore, of the view that if the price demanded is according to the prevailing market rates and yet the allottee-chemical units fail to lift the quarterly quota of molasses within a reasonable time, say fifteen days the Controller shall on being approached be under an obligation to permit the occupier of the sugar factory to sell the molasses to any other unit which is the actual user of the molasses. The power under the proviso to Section 8 (1a) is in our opinion, coupled with the duty to exercise the same within a reasonable period. There can be no dispute in law that when a power is conferred by statute without mentioning the period within which it could be Invoked, the same has to be done within a reasonable period, as all powers must be exercised reasonably, and exercise of the same within a reasonable period would be a fact of reasonableness." (*See Regional Provident Fund Commr. v. M/s. K. T. Rolling Mills (Pvt.) Ltd.*, JT 1995 (1)SC 138).

9. It would be noteworthy that Section 18G (1) of the Industries (Development and Regulation) Act, 1951, empowers the Central Government to provide, for regulating the supply and distribution of any article or class of articles relating to any scheduled Industries by means of a notified order, if it appears to it to be necessary or expedient to do so with a view to securing equitable distribution and availability of such articles at a fair price. Sub-section (2) provides that without prejudice to the generalities of powers conferred by sub-section (1) a notified order made there under may provide ;

....."(d) for requiring any person manufacturing, producing or holding in stock any such article or class thereof to sell the whole or part of the articles so

manufactured or produced during a specified period or to sell the whole or part of the articles so held in stock to such person or class of persons and in such circumstances as may be specified in the order." sub-section (3) of Section 18G of the Act afore stated, which provides for the price to be paid, is quoted below for ready reference :

"(3) Where, in pursuance of any order made with reference to clause (d) of sub-section (2), any person sells any article, there shall be paid to him the price therefore

(a) where the price can consistently with the controlled price, if any, be fixed by agreement, the price so agreed upon ;

(b) where no such agreement can be reached. the price calculated with reference to the controlled price, if any, fixed under this section ;

(c) where neither clause (a) nor clause (b) applies, the price calculated at the market rate prevailing in the locality at the date of sale."

10. There is no illegality in the Controller Issuing a direction that demand of prices of molasses from Chemical Sector at rates higher than the prevailing rates in the market would be taken as refusal to sell or supply the molasses to the concerned Chemical units in that demand of higher price can reasonably be taken as a subterfuge to defeat the statutory provision providing for distress sale of an essential commodity to the given sector. The direction contained in para 3 of the Controller's order dated 7.4.1998 is Justifiable on the principle embodied in Section 18G (3) (c) of the Act afore stated. It would crystallise from clause (c) of the subsection (3) of Section 18G of the Act afore stated that "the price calculated at the market rate prevailing in the locality on the date of sale" has to be paid In case there Is no controlled price and the parties to the transaction fail to arrive at an agreement regarding price. Although sub-section (3) of Section 18G will come into play where, there exists a notified order within the meaning of sub-section (2} of Section 18G but the principle contained therein may be applied to the case on hand in that the Adhiniyam provides for sale of 40% of molasses to chemical units without providing for any mechanism for determination of price to be paid for sale of the reserved quota of molasses too Chemical units. On the facts unfolded in the counter-affidavit, it would appear that the concerned Chemical units are scheduled Industries within the meaning of the Central Act afore stated. Respondent No. 3 for example is covered under Item No. 19 of the Schedule I.

11. In the event of there being a dispute as to whether the price demanded by the occupier of a sugar factory Is according to the rates prevailing in the market, the Controller while considering the request of the occupier to permit him to sell the molasses to any other unit would have an Implied power to determine the dispute as to whether the price demanded is according to the prevailing market rates in that but for such implied power the provision regarding reservation visualised by sub-section (1a) of Section 8 of the Adhiniyam can be foiled by the

occupiers of the sugar factories by demanding exorbitantly high price of molasses. Any order passed in this manner would take on the complexion of quasi-judicial order the validity of which, if challenged can be tested on the anvil of reasonableness, rationality and procedural fairness. The occupier of a sugar factory cannot venture to dispose of allotted quantity of molasses to a person other than allottee without prior approval of the Controller, except on pains of rendering himself susceptible of being prosecuted under Chapter IV of the Adhiniyam on a report In writing of the facts constituting offences made by an Excise officer of or above the rank of Excise Inspector.

12. As regards the submission of Sri Bharatji Agarwal that the petitioners are hide-bound by the agreement arrived at between the U. P. Sugar Mills Associations on one hand and the representatives of the Chemical Units on the other, suffice it to say that on the materials placed on record, it could not be established that the petitioners had in any manner authorised the U. P. Sugar Mills Association to enter into any short term or long term agreements with the Chemical Units operating in the State in respect of the prices of molasses to be sold or supplied to Chemical Units pursuant to the orders of the Controller u/s 8 of the Adhiniyam. On the contrary, the materials on record go a long way in establishing that the representatives of the petitioners, had walked out of the meeting in protest and some of the Chemical units had themselves requested the producers of the molasses to offer their "most competitive Basic Rate, available stock, grade of your molasses to enable us to consider to place an order on your sugar mill for purchase of molasses." The agreement is not binding on petitioners in the absence of their being a privity to it.

13. The only other submission of Sri Bharatji Agarwal that needs to be scanned is that different market segments can have different prices for the same commodity. To be precise, the argument is that the price of molasses prevailing to potable liquor sector should not be taken as the market price of molasses for chemical sector. Quoting from "Marketing Management" by Philip Ketter 9th Edn. the learned counsel submitted that where following conditions exist, different customer groups may be charged different prices for the same product :

"First, the market must be segmental, and the segments must show different intensities of demand, Second, members of the lower price segment must not be able to resell the product to the high price segment. Third, competitors must not be able to undersell the firm in the higher-price segment. Fourth, the cost of segmenting and policing the market must not exceed the extra revenue derived from price discrimination. Fifth, the practice must not breed customer resentment and ill will. Sixth, the particular form of price discrimination must not be illegal."

14. In fact the authority relied upon by Sri Bharatji Agarwal is based on principle of discriminatory pricing (also pricing discrimination). The principle as stated in the authority relied on by Sri Bharatji Agarwal may be stated as thus ;

"Companies often modify their basic price to accommodate differences in customers, products, locations, and so on. Discriminatory pricing (also called price discrimination) occurs when a company sells a product or service at two or more prices that do not reflect a proportional difference in costs."

15. In our opinion, segmentation of market for the purpose of fixation of prices of commodities can either be done by legislation or by the producers of commodities themselves. It cannot be done by the Courts nor can it be done by the executive in the absence of legislative sanction coupled with guidelines. Under subsection (1 a) of Section 8, the occupier of a sugar factory is bound to sell or supply 40% of the molasses produced in each quarter of the molasses year in the sugar factory to such chemical Industries which are actual users of the molasses and are granted licences under the United Province Excise Act, 1910. Under sub-section (1), the Controller is clothed with the power to require the occupier of any sugar factory to sell or supply such quantity of molasses to such persons as may be specified in the order. As submitted at the bar. 20% of the molasses produced in its sugar factory is required to be sold or supply to the Distilleries of potable alcohol which have been granted licences under the United Province Excise Act, 1910. There is nothing in the Adhiniyam to suggest that "discriminatory pricing" may be forced upon the producers of molasses either by the Controller or by the Court. It is upto the producers to adopt/design pricing strategies and programmes on the principle of "discriminatory pricing" or for the Legislature to Intervene in public Interest. In our opinion, they cannot be compelled to do so by a writ, order or direction of the Court.

16. In a system of uncontrolled pricing, It would not be unreasonable to quote rates at which the petitioners are themselves purchasing molasses for consumption in their own distillery. The Controller is to take this and other factors into reckoning while deciding the controversy of whether the rates quoted by the occupiers of sugar factories are higher than the market rates.

17. In view of the above discussion, we are of the considered view that the directions embodied In para 3 of the Order dated 7.4.1998 Issued by the Controller of molasses do not infringe upon the fundamental rights of the petitioners guaranteed under Article 19(1)(g) of the Constitution, nor do the impugned directions Issued by the Controller Impinge upon the legislative field so as to warrant interference by this Court. The petitioners are, therefore, not entitled to the relief (e) (ii) extracted in the earlier part of this judgment.

18. In so far as relief (a) is concerned, the petitioners in substance want a declaration that if the price offered by them is not accepted by the allottees. It should be deemed that the molasses are not required by the allottees and further that the petitioners would have In that event, freedom to sell or captivity consume the reserved quota of molasses In their own distilleries without reference to the Controller of Molasses. Such sweeping directions, in our opinion, would overreach the mandate engrafted In the proviso to Section 8 (1a) of the Adhiniyam which requires "prior approval of the Controller" for sale of molasses

not required by the allottees chemical units. The provision is designed to ensure compliance of the legislative policy of reservation in favour of chemical units. The petitioners have to approach the Controller of Molasses and satisfy to him that the allottee chemical units do not require the allotted quantity of molasses and therefore, the same be released in their favour to be captivity consumed or sold to any other actual user of the molasses. Such a blanket direction as claimed cannot be issued. Writ, it may be observed, is not a forum for granting declaratory reliefs of the type the petitioners herein have prayed for. As observed earlier in this judgment, the allottee is under an obligation to lift the reserved quantity of molasses within a reasonable time. In the event of failure on the part of the allottee to so lift the molasses, the Controller on being approached by the occupier of the sugar factory should pass appropriate orders as visualised by the proviso to Section 8 (1a) of the Adhiniyam within a reasonable time.

19. In so far as the relief (b) is concerned suffice it to say that the petitioners cannot be permitted to utilise the reserved quantity of molasses manufactured by them for the purposes of their own distilleries except in accordance with the provisions contained in the proviso to sub-section (1 a) of Section 8 of the Adhiniyam,

20. Before parting, we, however, feel called to observe that it leaves much to be desired at the level of the State for securing equitable distribution and availability at reasonable and fair prices of molasses to chemical sectors if at all this sector is to be encouraged and developed. The State must shape and mould its industrial policy in such manner as may be conducive to the growth of various industrial units Including distilleries producing potable alcohol without unreasonably hampering the growth and development of sugar Industries.

21. On the conclusions afore stated, we are of the view that the Interest of Justice would be best attained if the writ petition is disposed of with the direction that if an application is made on behalf of the petitioners under the proviso to sub-section (1 a) of Section 8 of the Adhiniyam, the Controller shall dispose it of in accordance with law after notice to the parties concerned within a period not exceeding four weeks from the date of receipt of the application. The writ petition is disposed of accordingly.