
(2000) 07 AHC CK 0056
In the Allahabad High Court
Case No : C.M.W.P. No. 838 of 1999

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

Date of Decision : 12-07-2000

Acts Referred:

Uttar Pradesh Sheera Niyam Adhiniyam, 1964 — Section 10, 7A(1), 8(1)

Citation : (2000) 3 AWC 2489

Hon'ble Judges : M. Katju, J;A.K. Yog, J

Bench : Division Bench

Advocate : Shanti Bhushan, Tarun Agrawal and Rakesh Dwivedi, for the Appellant; Bharat Ji Agarwal, Piyush Agrawal and S.C., for the Respondent

Judgement

M. Katju and A.K. Yog, JJ.—Heard Sri Shanti Bhushan and Sri Tarun Agarwal, learned counsel for the petitioners and Sri Bharat Ji Agarwal and Piyush Agarwal, learned counsel for the respondent Nos. 3 and 4 and the learned standing counsel for the respondent Nos. 1 and 2.

2. This writ petition has been filed against the impugned order of the Controller of Molasses dated 25.8.1999 (Annexure-7 to the writ petition). By that order, the petitioner's application under the proviso to Section 8 (1a) of the U. P. Sheera Niyam Adhiniyam has been rejected.

3. The petitioners are sugar factories which also have their own distilleries, Under the U. P. Sheera Niyam Adhiniyam. 1964 and the orders passed thereunder, it has been provided that 40% of the molasses produced by the sugar factories are reserved for Chemical Industries. 40% could be sold in the open market, and 20% will be reserved for country liquor producers. Section 8 reads as follows :

"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.

(1-a) 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 licensee 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 users of molasses with the prior approval of the Controller.

(2) The order under subsection (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 utilize the molasses supplied to him under an order made under this 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 the entire quantity of molasses in stock or to be produced during the year or for any portion : but the pro-portion of molasses to be supplied from each sugar factory to its estimated total pro-duce of molasses, during the year shall be the same through-cut the State save where, in the opinion of the Controller, a variation is necessitated by any of the following factors :

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

(ii) the requirement 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 subsection (2).

(4) The occupier of a sugar factory shall be liable to pay to the State Government, in manner prescribed, administrative charges at such rate, not exceeding fifteen rupees per quintal as the State Government may from time to time notify, on the molasses sold or supplied by him.

(5) The occupier shall be entitled to recover from the person to whom the molasses is sold or supplied an amount equivalent to the amount of such administrative charges, in addition to the price of molasses."

4. The short controversy in this case is about the price at which the sugar factory has to sell the molasses to the chemical industries. Section 10 of the Sheera Adhiniyam had provided for fixing the maximum price for the sale of molasses. In the year 1998, this provision was deleted and thereafter there was no statutory control over the price of molasses to be sold to the chemical industries. The problem which arose was that while on the one hand, the sugar industries had to sell 40% of their production of molasses to the Chemical Industries, on the other hand, there was no statutory provision for fixing the price at which this molasses was to be sold. This difficulty was resolved by a Division Bench of this Court in Writ Petition No. 120 of 1999, decided on 9.7.1999, D.C.M. Shriram Industries Ltd. and others v. State of U. P. and others, (copy of which is Annexure-5 to the writ petition). The Division Bench held, and in our opinion rightly so, that the price which the sugar factory is entitled to receive is the market price of molasses. This view appears to be correct and reasonable because if the sugar factory offers to sell molasses at an exorbitant price which is far above the market price, it will be an indirect way to refuse to sell to the chemical industry. Hence, the Division Bench held that the price to be paid to the sugar factory shall be the market price. The petitioners were asked to make a representation to the Controller under the proviso to Section 8 (1a).

5. By the impugned order dated 25.8.1999, the Controller of molasses has rejected the representation of the petitioners in which the petitioners had alleged that the chemical industry was not willing to lift the molasses at the prevailing market price, and hence, the molasses should be released in favour of the petitioners for either self consumption or sale in the open market. Against that order, this writ petition has been filed. The Controller in the impugned order observed, "the rates quoted by the sugar mills for the reserved molasses have in actual effect been in accordance with the open market price of the molasses and not in accordance with the sale and purchase rates of the controlled molasses."

6. The petitioners are aggrieved by the observation in the impugned order that the market price to be paid to the sugar factory by the chemical industries should be the market price for the chemical industries sector. The grievance of the petitioner is that the market price is the general market price in the open market and not market price for any particular sector. We agree with the submission of Sri Shanti Bhushan that the market price cannot be taken only for the purpose of chemical industry. Market price is the price at which a willing seller would sell to a willing buyer, as held by the Supreme Court in a number of cases viz. Mahabir Prasad Santuka and Others Vs. Collector, Cuttack and Others, , Thakur Kamta Prasad Singh (Dead) by Lrs. Vs. The State of Bihar, , Prithvi Raj Taneja (Dead) by Lrs. Vs. The State of Madhya Pradesh and Another, etc. This market price is determined by the free play of market forces.

7. We can visualize a businessman who is selling molasses in the open market. Such a businessman would sell to whoever offers the highest price, and he has no concern whether the buyer belongs to the chemical industry or any other

industry. The aim of a businessman is obviously to get the highest price for his product, and he has no concern whether his buyer is of any particular industry or not. Hence, in our opinion, the approach of the Controller in the impugned order that the market price should be calculated only from the point of view of the chemical industry is not correct. In fact, the Controller has observed that the rates quoted by the sugar mills are in accordance with the market price of the molasses.

8. Sri Bharat Ji Agarwal, learned counsel for the respondent Nos. 3 and 4 has submitted that the market price should not be taken to mean the free market price. We do not agree. In our opinion, the market price means the free market price in the open market. Market price is to be contrasted to a controlled price fixed by the Government or some authority under a statute for fixing the price. Since Section 10 has been deleted there can be no fixed price fixed by any authority. The market price hence undoubtedly means the free market price. Since in his own order, the Controller has observed in the penultimate paragraph that the sugar mill has offered the market price that is between Rs. 135 to 150 per quintal but the chemical Industry had refused to lift at that price, hence permission should have been granted to the petitioners under the proviso to Section 8 (1a) of the Sheera Adhiniyam.

9. In our opinion, the impugned order is arbitrary as it has considered the market price only from the point of view of the chemical industry and not the free market price. In our opinion, market price means the free market price (as observed above) and not the market price vis-a-vis the chemical industry only.

10. Shri Bharatji Agarwal then argued that the Division Bench In Writ Petition No. 120 of 1999 had observed that discriminatory prices can be charged by the producers. We have carefully examined the observations of the Division Bench in this connection, and in our opinion, the said observations only mean that the sugar factories can enter into voluntary agreements with different purchasers of molasses for setting molasses at different prices.

11. In the circumstances, we quash the impugned order dated 25.8.1999. In this case, an interim order was passed on 10.9.1999 directing the petitioner to sell the reserved molasses to the chemical industry at Rs. 125 per quintal. The aforesaid interim order reads as follows :

"In the meantime, upon consideration of the facts and circumstances of the case and the submissions made across the Bar, it is provided, as an interim measure, and without prejudice to the rights and contentions of the parties, that the petitioners shall sell the reserved quantity of molasses to the concerned allotted chemical units at the rate of Rs. 125 per quintal. In case the concerned chemical units do not lift the molasses at the rate aforesaid within the fortnight from the date of receipt of notice served by the petitioners, it will be open to the petitioners to captivity consume the stocks of molasses of the second quarter of the sugar year 1998-99 or sell it to any other person in the open market. This is

subject to such order as may be passed by the Court to adjust the equity between the parties."

In our opinion, market price should now be determined afresh for the period of the lifting of molasses in pursuance of the impugned order dated 10.9.1999 (as extended from time to time).

12. It may be mentioned here that the petitioners are themselves purchasing molasses for their distillery, and In paragraph 20 (f) of the writ petition (which has been added by an amendment application, which we have allowed). It has been stated that the petitioners have been purchasing molasses from various parties at the rate between Rs. 180 to Rs. 210 per quintal. By the amendment application, which we have allowed today, it has been claimed that the petitioners should be entitled for compensation for the difference between the prevailing market price and the interim price of Rs. 125 per quintal, which was much below the prevailing market price at the relevant time. It is alleged by the petitioners that the prevailing market price at the relevant time was Rs. 180 to Rs. 210 per quintal. However, the respondents are disputing the figures and have alleged that the alleged market price was much lower than the price claimed by the petitioners. We are not going into the question as to what was the prevailing market price in the open market at the relevant time as there is a factual controversy. Hence, we are sending the matter to a retired Hon'ble judge of this Court who will decide this controversy after considering the various relevant factors and evidence and after hearing the parties or their counsel. It may be mentioned here that one of the factors which is certainly relevant in determining the market price is that the petitioners themselves have been purchasing molasses at the rate of Rs. 180 to Rs. 210 per quintal as stated in paragraph 20 (f) of the writ petition. This is very relevant because no one will ordinarily purchase at a higher price if a commodity is available in the free market at a lower price. Hence, this is certainly an indication that the prevailing market price at the relevant time was Rs. 180 to Rs. 210 per quintal because no businessman will purchase a commodity at a higher price than the price at which it is available in the open market. In fact, the Division Bench in Writ Petition No. 120 of 1999 has observed. "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 dealing the controversy of whether the rates quoted by the occupiers of sugar factories are higher than the market rates." However, this is only one of the relevant factors and is not the conclusive factor for determining the market price. There may be other relevant factors also (e.g. the price, which the other sugar factories charged for the 40% reserved quota at the relevant time) and hence we are not expressing a final opinion on this point.

13. Sri Bharatji Agarwal, learned counsel for the respondents has alleged that the same sugar factory has sold the molasses to the chemical industry @ 116 per quintal in August and September. 1999. We are not expressing our final opinion

on this matter. It is possible that the molasses was sold at a lower price due to pressure from some authority or for some other reason, and hence that may not necessarily be the market price. It is our considered opinion that the market price should be determined after hearing both the parties or their counsel and also considering the evidence adduced by them by a retired High Court Judge preferably within three months of production of a certified copy of this order.

14. Shri Shanti Bhushan, learned counsel for the petitioners agrees that the remuneration to the retired Judge will be paid by the petitioners. We direct that the petitioners shall pay Rs. 50,000 to the said retired Judge and we nominate for the purpose Hon"ble Mr. Justice A. N. Verma, a retired Judge of this Court and former Chairman of the Monopolies Commission. The petitioners shall also pay a sum of Rs. 3,000 per month to Hon"ble Justice Verma in addition to his remuneration for engaging a Secretary for the purpose. The petitioners shall also pay any incidental expenses incurred by Mr. Justice Verma to him. If the proceedings before Hon"ble Mr. Justice Verma take longer than three months, then a further sum of Rs. 25.000 will be paid to him by the petitioners. These payments must be made in advance to Mr. Justice Verma by the petitioners. Also, the parties must supply copies of all documents on the record of this petition to him. The parties or their counsel shall appear before Hon"ble Mr. Justice Verma on 29.7.2000, and no separate notices shall be sent to them.

15. Since respondents have paid Rs. 125 per quintal for the amount of molasses which they have lifted under the interim orders of this Court. If it is found by the Hon"ble Judge to whom we are sending the matter that the market price was more than 125 per quintal, then the balance will be paid by the respondents to the petitioners within two months of the decision of the said Hon"ble Judge. If, however, it is found that the free market price was less than Rs. 125 per quintal, then the petitioners will pay the balance to the respondents.

16. Petition is allowed. No orders as to cost.