(2003) 04 AHC CK 0207

In the Allahabad High Court

Case No : C.P.W.P. No. 7265 of 2003

D.C.M. Shriram Industries Ltd. APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 24-04-2003

Acts Referred:

Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1953 — Section 15(4)
Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Rules, 1954 — Rule 22, 23

Citation : (2003) 3 AWC 2508

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : Bharati Sapru, for the Appellant; Subodh Kumar, S.C. and P.M.N. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—This writ petition has been filed against an order dated 25.1.2003 passed by Special Secretary, Sugar Industries, Anubhag-III, Annexe Bhawan, Lucknow by which the State Government has, in exercise of appellate powers u/s 15 (4) of U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 read with Rule 23 of the U.P. Sugarcane (Regulation of Supply and Purchase) Rules, 1954 (in short the Act and Rules respectively), dismissed the appeal, and has upheld the order of Cane Commissioner U.P. at Lucknow dated 27.10.2002, assigning twelve cane centres in favour of S.B.E.C. Sugar Limited, Lovan Malakpur, district Baghpat.

2. I have heard Ms. Bharti Sapru for D.C.M. Shriram Industries Ltd., Unit Daurala Sugar Works, Daurala, Meerut ; and Sri Subodh Kumar for respondent No. 4.

3. The Cane Commissioner by his order dated 27.10.2002 assigned twelve cane centres, namely, Binoli-I Binoli-II, Jiwana Guliyan-I/Makhar Jiwana-II ; Jiwana-III ; Ranchar-I Ranchar-II ; Ranchar-III ; Sirsalgarh-I Sirsalgarh-II ; Fazalpur-I

and Fazalpur-II, to S.B.E.C. Sugar Limited Lovan Malakpur, respondent No. 3. Petitioner filed an appeal, as above, inter-alia, on the grounds that in crushing season 2000-2003, the crushing capacity of petitioner factory is 7000 T.C.D. and that a letter of intent had been received from the Central Government on 25.2.1994 for Increasing the crushing capacity to 8000 T.C.D. The factory has demanded 126 lacs quintals sugarcane to be reserved for the factory of the year 2000-2003. In the last three years, the factory has to purchase sugarcane from the areas, outside the reserved area, for which the permission had to be taken from Cane Commissioner. He has not taken into consideration the relevant factors under Rule 22 of the rules. That the aforesaid twelve cane centres were reserved for the appellant and they have been arbitrarily assigned to Malakpur Sugar Mills. In the year 2000-2001, the reserved cane centres Ranchar-A and Ranchar-B were assigned to Malakpur Sugar Mills against which an appeal was filed which was allowed by the Special Secretary, Sugarcane Industries on 19.4.2001. Against the same order-Malakpur Sugar Mills had filed an appeal in respect of reservation of cane centres Ranchar-II-B ; Jiwana Guliyan-B-I and II ; Binoli-I-A ; Binoli-II-B and Sirsalgarh-I-A, in favour of appellant. The appeal was dismissed by the State Government on 29.4.2002. The appellant has made considerable investment for development of entire area, including twelve cane centres and had sown early riping variety of Sugarcane in 349 acres. Appellant also challenged that drawal percentage calculated by the Cane Commissioner on which demand was fixed at 242.91 lac quintals.

4. The appeal was heard and dismissed by the State Government on the following grounds :

(A) in the previous crushing season, Daurala Sugar Mills crushed 119.39 lac quintals whereas it had 252 lac quintals of sugarcane in its reserved and assigned area which comes to 47.12%.

(B) in the present year, appellant''s requirement has been assessed at 126 lac quintals for which they have been given 244.48 lac quintals sugarcane at the drawal percentage of 51.53% whereas Malakpur Sugar Mills at the capacity of 4500 T.C.D., has crushed 87-84 lac quintals while it had 187.80 lac quintals sugarcane in its reserved and assigned area of pervious year, which comes to 63.74%.

(C) Malakpur Sugar Mills has started crushing much before the other sugar mills, and that this year their need has been assessed at 94.50 lac quintals against which 177 lac quintals sugarcane was made available.

(D) From the record, it is found that cane centres are much nearer to Malakpur Sugar Mills.

(E) The societies and farmers have shown their willingness for assignment to Malakpur Sugar Mills.

(F) Malakpur Sugar Mills has made better arrangements for the payment in the previous year and started crushing much before the other sugar mills.

(G) It is clear from the order of Cane Commissioner that appellant sugar mills has sufficient sugarcane available to it as compared to its requirements.

5. The Special Secretary accepted the fact that there is an error in the reservation order inasmuch as the cane centres, included in the reserved area of appellant, have been assigned to Malakpur Sugar Mills whereas the same cane centres were shown to have been assigned in the reserved area of Malakpur. This was found as an error for which orders were issued for necessary corrections and the appeal was dismissed.

6. Ms. Bharti Sapru submits that the appellate authority has failed to take into consideration all the relevant factors given in Rule 22 of the Rules of 1954, and has laid emphasis only on distance factor, ignoring other factors. She has also challenged drawal percentage, and has submitted that the petitioner sugar mills has made considerable investment for development of these cane centres for a number of years. She also submits that petitioner has adequate modern transport facilities for transportation, and that the distance factor is no longer a relevant or significant factor to be taken into account, and has relied upon the judgments of this Court in U.P. State Sugar Corporation Ltd. v. State of U.P. and Ors. 1995 AWC 637 and Triveni Engineering and Industries Ltd. Vs. State of U.P. and others,

7. Sri Subodh Kumar, learned counsel for respondents, on the other hand, defending the order, has also relied upon the same decisions of this Court as above, in submitting that both the Cane Commissioner and Appellate Authority, have taken into consideration all the relevant factors given in Rule 22 of the Rules of 1954. He submits that the area covered by the aforesaid cane centres was included in the letter of intent of Malakpur Sugar Mills. Prior to reserving the area in their favour, the said twelve centres were reserved for Kisan Sahkari Chini Mills Bhaghpat, Meerut. The capacity of respondent Sugar Mills was increased from 2500 T.C.D. In 1998-99 with its started production, to 4500 T.C.D. In the year 2001-2002. Since the capacity, production and production days (210 in a year) were increased, a request was made to the Cane Commissioner to increase and allot reserved areas. The Cane Commissioner, after taking into consideration the entire facts and circumstances, passed an order on 27.10.2002 in favour of four Sugar Mills of the district, namely Daurala, Mawana, Muinddinpur and Sakoti Tanda. He has denied the crushing capacity of petitioner and states that it crushed only 47.12% sugarcane in 184 days in the previous year, and that the same demand has been accepted for this year as well and that the societies and cane growers are in favour of supplying the sugarcane to respondent Malakpur Sugar Mill, which had made better arrangement for payment both in previous and the current year.

8. In U.P. State Sugar Corporation Ltd. v. State of U.P. and Ors. (supra) and Triveni Engineering Industries Ltd. v. State of U.P. and Ors. (supra) ; this Court

held that the Act and rules show in unmistakable terms that the order for assignment or reservation of an area has to be passed after taking into consideration various factors and it cannot be based upon one solitary consideration. May be in a given case, one single factor may far outweigh, the effect of all other remaining factors must be considered. The distance factor alone can be taken into consideration for assigning or reserving the area. It is for the authorities, who are experts in the field, to take into consideration all the factors and after balancing them pass appropriate orders which may best serve the interest of the sugar factory and the cane-growers. In case a statutory Tribunal has exercised its discretion on the basis of irrelevant considerations or without regard to relevant considerations, certiorari may be issued to quash the order.

9. Applying the aforesaid principles of law, laid down by this Court, read with Section 15(4) of the Act and Rule 22 of the rules. I find that the impugned orders are not based only upon distance factor. The fact that the cane centres are nearer to Malakpur Sugar Mills was not only the consideration. They have also taken into account the crushing capacity, the drawl percentage and number of days of working as well as the arrangements made for payment in the previous year. The appellate authority has also taken into consideration that Malakpur Sugar Mills started crushing much before the other three Sugar Mills in the district and that the Cane Co-operative Societies and farmers have expressed their willingness of arrangements in favour of Malakpur Sugar Mills. The appellate authority has also taken into account the reserve area made available to petitioner, with reference to its crushing capacity and demand in the current year. The fact that petitioner sugar mills has made investment in the area is one of the factors of Rule 22(b) of the rules, but that by itself, cannot be a ground to continue the reservation in favour of petitioner''s mills for all times to come. Malakpur Sugar Mills started crushing in the year 1998-99 with the capacity of 2500 T.C.D. and has increased its capacity to 4500 T.C.D. In the year 2001-2002. It, therefore, rightly claimed excess area to be assigned to it which had to be carved out from the available area subject to the availability of sugarcane. In the present case, the Cane Commissioner as well as the appellate authority have exercised their discretion after taking into account all the relevant statutory factors and have considered and balanced the interests of both the sugar mills as well as the co-operative cane development societies and the farmers.

10. For the aforesaid reasons, the impugned orders do not call for any interference by this Court. The writ petition fails and is, accordingly, dismissed.

