

(1995) 04 AHC CK 0036
In the Allahabad High Court
Case No : Writ Petition No. 5435 of 1993

Dhampur Sugar Mills Ltd.Dhampur,Bijnore	APPELLANT
Vs	
Joint Secretary,Sugar Industries and Cane Development Secretariat,Lucknow and Others	RESPONDENT

Date of Decision : 04-04-1995

Acts Referred:

Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1953 — Section 14, 15
Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Rules, 1954 — Rule 22

Citation : (1995) 04 AHC CK 0036

Hon'ble Judges : G.P.Mathur, J

Final Decision : Disposed Of

Judgement

G. P. Mathur, J.—The petition is being disposed of finally at the admission stage with the consent of the parties.

2. U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1963 (hereinafter referred to as the Act) has been enacted to regulate the supply and purchase of sugarcane required for use in Sugar Factories. The Cane Commissioner exercising powers under Section 15 of the Act passed an order on November 9, 1994 directing that two purchase centres namely, Haidarpur and Alawalpur be assigned to the petitionerDhampur Sugar Mill. Feeling aggrieved by the aforesaid order of the Cane Commissioner, Bijnor Sugar Mill preferred an appeal before the State Government under subsection (4j) of Section 15 of the Act. The appeal was allowed by the order dated January 27, 1995 and the aforesaid centres were assigned to Bijnor Sugar Mill. The writ petition has been filed by Dhampur Sugar Mill for quashing the order dated January 27, 1995 passed by the State Government. Subsequently, the State Government passed an order on February 28, 1995 by which the earlier order dated January 27, 1995 was modified and the petitionerDhampur Sugar Mill and Shivhara Sugar Mills were also allowed to operate the aforesaid purchase centres. The petitioner has moved an amendment application seeking quashing of this order as well of the State Government.

3. The order passed by the State Government on January 27, 1995 is a short one. The Appellate Authority has noticed the distance of the purchase centre from the two Mills and after observing that they were closer to Bijnor Sugar Mill, they have been assigned in its favour. No other details or reasons have been given in the impugned order for allowing the appeal and assigning the centres to respondent No. 2.

4. I had an occasion to consider exactly similar controversy in writ petition No. 905 of 1995 U.P. State Sugar Corporation Ltd. Rampur v. State of U.P. and others, decided on 15th February, 1995. It has been held that it is obligatory upon the State Government to hear the concerned factory and Canegrowers Cooperative Society while deciding an appeal under subsection (4) of Section 15 of the Act. It has been further held that the Appellate Authority has also to take into consideration the facility of transport, previous reservation and assignment orders, view of the Canegrowers Cooperative Society, arrangement made by the factory for payment of price etc. in previous years, and efforts made by the factory in developing the area apart from the distance of the factory and quantity of cane to be crushed in terms of Rule 22 of U.P. Sugarcane (Regulation of Supply and Purchase) Rules,

5. Shri D.P. Singh, learned counsel for the petitioner has submitted that the Appellate Authority has failed to notice that the disputed Purchase Centers have been continuously assigned to the petitioner Sugar Mill since 1991. He has further submitted that Bijnor Sugar Mill never made any claim for being assigned the disputed purchase centres to it before the Cane Commissioner. It has also been urged that though in the earlier part of the order, crushing capacity of the two mills was noticed but while passing the order, the aforesaid fact was not taken into consideration. The crushing capacity of petitioner sugar mill was much higher and there was short fall of 50 lac quintals of sugarcane while the short fall of Bijnor Sugar Mill was only 4 lacs quintals. Learned Counsel has also urged that the actual performance of both the Sugar Mills ought to have been considered. Shri R. D. Khare, learned counsel for respondent No. 2 has submitted that Bijnor Sugar Mill had spent huge amount on the development of area and fruits of the development should go to respondent No. 2 and not to the petitioner Sugar Mill solely on the basis of its higher crushing capacity. He has also urged that at the time of increasing crushing capacity the petitioner's mill had given an undertaking that there was sufficient sugarcane available in its reserved area and in view of this undertaking which must have been given by the petitioner sugar mill when it was granted permission to increase its crushing capacity, it is not open to it to complain that sufficient quantity of sugarcane is not available to it.

6. A perusal of the impugned order passed by the State Government leaves no room for doubt that the factors which are relevant for assigning an area in favour of a Sugar Mill have not at all been taken into consideration. The order has been passed only on one factor, namely, the distance of the purchase centres from the Sugar Factory. The other factors which are relevant in terms of Rule 22 of the

Rules have not at all been taken into consideration. The order does not indicate that the view of the Cane Growers Cooperative Society were ascertained before passing the impugned order. In these circumstance, the impugned order cannot be sustained.

7. So far as the order dated February 28, 1995 is concerned, it is not clear as to under what circumstances the aforesaid order was passed and the earlier order dated January 27, 1996 was modified. The Ac); does not confer any power of review upon the Appellate Authority. It is well settled that no Court or Authority has power of setting aside an order, which has been properly made, unless it is given by Statute. The right of appeal has been created by Statute and in absence of any provision of review, such a power cannot be exercised See Ear Bhajan Singh v. Koran Singh, AIR 1966 SC 641. A perusal of the order shows that the same appears to have been passed on the representation of canegrowers of the area. Every Court or Authority has inherent powers to recall or set aside an order if there is a procedural irregularity. If an order has been passed without notice to a party, the same can always be set aside or recalled at the instance of such a party. If the canegrowers of the area had approached the State Government for recalling the order dated January 27, 1995 on the ground that the same had been passed without affording them an opportunity of hearing, the proper course was to first issue notice to the concerned Sugar Mills namely, Dhampur Sugar Mill [and Bijnor Sugar Mill and then to pass an order after affording them an opportunity of hearing. This procedure was not adopted by the State Government while passing the order dated February 28, 1995. Therefore, the impugned order cannot be sustained and has to be set aside.

8. In the result, the writ petition succeeds and is hereby allowed. The impugned order of the State Government passed on January 27, 1995 and February 28, 1995 are quashed. The Appellate Authority is directed to decide the appeal afresh in the light of the observations made in Writ Petition No. 905 of 1995¹⁷. P. State Sugar Corporation Ltd. Rampur v. State of U.P. and others, decided on February 15, 1995 and in accordance with law. The appeal shall be decided after giving opportunity of hearing to Cane Growers Cooperative Society and all other necessary parties.

9. It is being made clear that it should not be understood that this Court is expressing any opinion regarding merits of the claim of any party. The Appellate Authority shall exercise his independent judgment after taking into consideration all the relevant factors mentioned in the Act and the Rules. It will also be open to the Appellate Authority to pass any interim order if it considers it necessary on the facts and circumstances of the present case. A representative of the petitioner and respondent No. 2 shall appear before the Appellate Authority of the State Government on April 10, 1995. The office is directed to issue a certified copy of the judgment within two days.

10. The petitioner shall also file a copy of the judgment given in Writ Petition No. 905 of 1995.