(2004) 02 AHC CK 0163

In the Allahabad High Court

Case No : C.M.W.P. No''s. 19819 and 32550 of 1997

Hari Shanker and Others APPELLANT

Vs

Cane Commissioner and Others RESPONDENT

Date of Decision : 20-02-2004

Acts Referred:

Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1953 — Section 15(2), 15(3)
Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Rules, 1954 — Rule 108

Citation : (2004) 2 AWC 1623

Hon'ble Judges : Sushil Harkauli, J;Amar Saran, J

Bench : Division Bench

Advocate : J.N. Tiwari, S.C, for the Appellant;

Final Decision : Disposed Of

Judgement

Amar Saran, J.—We have heard learned counsel for parties and have also perused the entire material available on record.

2. Civil Miscellaneous Writ Petition No. 19819 of 1997 was filed by six members of a registered society known as Sahkari Ganna Vikas Samiti Limited, Ram Kola (P) District Padrauna, which was a Cane Growers Co-operative Society (hereafter referred to as the Co-operative Society) for seeking a direction in the nature of mandamus, inter alia, for compelling the respondent No. 5, Gangeshwar Limited Ram Kola, Padrauna, District Deoria (hereafter referred to as the sugar mill) and the respondent No, 6, U. P. State Sugar Cane Corporation Limited Unit Laxmiganj, district Padrauna for accepting petitioners'' sugar cane and for crushing the same. An interim order was passed in Writ Petition No. 19819 of 1997 on 11.6.1997 whereby the Deputy Cane Commissioner, who was permitted to be impleaded as party-respondent No. 7, was directed to ensure obedience of the order of the Cane Commissioner dated 28.5.1997. By this order of the Cane Commissioner the Ramkola Sugar Mill was directed to purchase the standing sugar cane available in the reserved area and to supply the same to the nearby

sugar mills.

3. Civil Miscellaneous Writ. Petition No. 32550 of 1997 was filed by Gangeshwar Limited through its Vice President (who was also the occupier), inter alia, for staying the operation of the order dated 17.9.1997 (Annexure-17 to the writ petition) passed by Deputy Cane Commissioner, Deoria. By this order a direction was issued to the sugar mill to pay Rs. 1,16,550 to the cane farmer members of the Co-operative Society (respondents 3 to 7 in C.M.W.P. No. 32550/1997 and petitioners in the Writ Petition No. 19819 of 1997), as compensation on account of the fact that the sugar mill had failed to crush 1665 quintals of sugar cane which was being offered by those cultivators. The two connected writ petitions arc being disposed of by a common judgment. However for convenience we first proceed to deal with C.M.W.P. No. 32550/1997 filed by the sugar mill.

4. As there was no compliance of the interim order passed in C.M.W.P. No. 19819, dated 11.6.1997 hence in the light of this circumstance, the Deputy Cane Commissioner (respondent No. 1 in C.M.W.P. No. 32550/1997) had passed the order dated 17.9.1997 requiring the sugar mills to pay compensation to Hari Shanker and other cultivators for non-compliance of the order passed by this Court in Writ Petition No. 19819 of 1997 and related orders passed by the Cane Commissioner, Deoria and Deputy Cane Commissioner, Deoria on 11.6.1997, 28.5.1997 and 19.6.1997. Gangeshwar Limited (Petitioner in C.M.W.P. No. 32550/ 1997) has sought to assail the order of the Deputy Cane Commissioner on the grounds (1) that only the Cane Commissioner has Jurisdiction and the Deputy Cane Commissioner had no jurisdiction to pass the impugned order, (2) that there was no obligation on the mill to accept all the sugar cane that was being offered to it and it was free to refuse the offer as per its own convenience and to close the crushing season whenever it chose, (3) that the owners themselves had defaulted by not bringing the sugar cane to the mill, (4) that there was no privity of contract between respondent Nos. 3 to 7 who were member of the cooperative society and the mill and it was only the District Co-operative Society which could have sought arbitration under Rule 108 of the Sugar Cane (Regulation of Supply and Purchase) Rules, 1954 (hereinafter referred to as the Rule). (5) that opportunity of hearing had not been provided and there was breach of the principles of natural justice in determining the compensation payable by the mill.

5. So far as the first point is concerned, an order dated 26.11.1988 has been filed as Annexure-4 to the counter-affidavit on behalf of the co-operative society whereby the Cane Commissioner, U. P. had appointed all the Regional Deputy Cane Commissioners to function as sole arbitrators in regard to disputes relating to payment of sugar cane price and commissions, in exercise to powers conferred upon him under Rule 108. Further, in the present case there was also a specific order of the Cane Commissioner, No. 577/1997, dated 4.7.1997 whereby powers had been conferred on the Deputy Cane Commissioner, Deoria to decide the present dispute. Further more, the High Court had also directed the Deputy Cane

Commissioner by order dated 11.6.1997 in C.M.W.P. No. 19819 of 1997, to ensure compliance of the order of the Cane Commissioner dated 28.5.1997. By that order the Cane Commissioner had directed the Deputy Cane Commissioner to ensure that the sugar mill purchased all the sugar cane, which was still available in the area, as per his information and supply it for crushing to the nearby sugar mills. There is no force therefore, in the submission of lack of jurisdiction with the Deputy Cane Commissioner to decide the dispute.

6. Regarding the second point that there was no obligation on the sugar mill to purchase all the sugar cane that was being offered by the cultivators, Clause 6 of the Agreement between the Cane-growers Cooperative Society and the occupier of a factory, (which has been framed as Form ''C'' under Clauses 3 (3) and 4 (1) of the U. P. Sugarcane Supply and Purchase Order, 1954 (hereafter referred to as the agreement) may be usefully perused. The relevant part of the said clause reads as follows :

"In the event of the second party wilfully failing to take delivery of the cane, which the first party is ready to deliver in accordance with the agreement, the second party shall be liable to pay to the first party the actual price of the quantity of such cane, which falls to purchase."

7. There is therefore, no escape from the proposition that the second party has to pay the first party the actual price of such cane, which he falls to purchase. Clause 8 of the agreement also provides that compensation can only be avoided by either party, when breach of the agreement is due to natural causes, calamities or accidents beyond human control.

8. Sections 15 (2) and 15 (3) of the Sugar Cane (Regulation of Supply and Purchase) Act, 1953 (hereinafter referred to as the Act) also emphasize the obligation of the factory to accept all the sugarcane or such part determined by he Cane Commissioner that is being offered to it in the area reserved or assigned to it. In this connection Section 15 (2) and 15 (3) of the Act may be usefully perused :

"Section 15 (2). Where any area has been declared as reserved area for a factory, the occupier of such factory shall, if so directed by the Cane Commissioner, purchase all the cane grown in that area, which is offered for sale to the factory.

Section 15 (3). Where any area has been declared as assigned area for a factory, the occupier of such factory shall purchase such quantity of cane grown in that area and offered for sale to the factory as may be determined by the Cane Commissioner."

9. The reason for this obligation on the factory is that reciprocally the cane grower or the cane grower''s cooperative society are also disentitled from selling the sugar cane to any other party other than the factory for whom the particular area has been reserved or assigned. It was therefore, futile for the sugar mill to

contend that it could refuse to purchase the left over cane or close the crushing as per its sweet will.

10. The third point regarding default by the respondent Nos. 3 to 7 is also not sustainable. The petitioner has sought to contend that it was making open offers for receiving the cane at its gate without restriction from the growers by issuing a general notice that it would close crushing on 5.5.1997, and that this time was extended till 8.8.1997 when it stopped crushing, On 6.5.1997 there was a notice to Hari Shankar to deliver his sugar cane immediately as the factory was to close on 7.5.1997. These notices giving unreasonably short time for the delivery were really eye wash, and were apparently being generated to help the sugar mill escape its obligation for purchasing the sugar cane as it Would not have been possible for the respondents to make arrangements for cutting the still standing sugar cane on such short one or two day notice, as there was also a problem for getting labourers. In the counter-affidavit on behalf of the Deputy Cane Commissioner it has been mentioned that the petitioner mill had not given proper indents also to the respondent No. 2, the cooperative society for supplying an exact quantity of cane.

11. In the present case, there was also specific order of the Cane Commissioner dated 26.5.1997 wherein he had ordered that permission would only be granted to end crushing provided the factory got a joint survey conducted by the occupier of the factory and the District Cane Officer for certifying that no more cane was left in the area which could be crushed and if any cane remained uncrushed the mill would be responsible for the loss to the cultivators. Similarly, the order of the Cane Commissioner dated 28.5.1997 also required the mill to purchase the remaining sugar cane and to have the same supplied to the nearby sugar mill. Thereafter, the letter of the District Cane Officer, Padrauna dated 31.5.1997 specifically directed the mill to purchase the remaining sugar cane of Hari Shanker Kushwaha and other cultivators and to supply the same to the nearby sugar mill, and to furnish information about this purchase by 3.6.1997. This was not done. This Court had also by the interim order dated 11.6.1997 passed in Civil Misc. Writ Petition No. 19819 of 1997, directed compliance of the earlier order of the Cane Commissioner dated 28.5,1997. The petitioner itself mentions in paragraphs 7 and 10 of the Writ Petition No. 32550 of 1997 that although the agreement was for purchase of 32.5 lac quintals of sugar cane from the Co-operative Society, but in fact only 29.52,895.34 qtls. had been purchased from the respondent No. 2, although it had crushed 33,52,985.044 qtls of cane. These facts and circumstances clearly show that it was the petitioner sugar mill which had defaulted in purchasing the agreed quantity of sugarcane from the Co-operative Society and the respondent Nos. 3 to 7 were not guilty of any default.

12. Regarding fourth point as to the absence of privity of contract between respondents 3 to 7 and sugar mill it may be mentioned that as respondent Nos. 3 to 7 were members of the co-operative society (respondent No. 2). They were, therefore, bound to honour any contract between cooperative society and the

petitioner sugar mill. Corresponding to this obligation on respondent Nos. 3 to 7, there was also a reciprocal obligation on the mill to honour the contract with respondent No. 2, co-operative society, and also with its members. The respondent No. 2 has even filed a counter-affidavit wherein he has supported the claim of respondent Nos. 3 to 7 for getting their remaining sugar cane purchased by the petitioner. There was also a specific letter of the District Cane Officer, Padrauna dated 31.5.1997 whereby he has specifically directed the petitioner to purchase the remaining sugar cane of Hari Shanker and other cultivators and supply the same to the nearby sugar mill. The objection that the members should have approached for arbitration through the Society and not directly, is too technical to be entertained in the discretionary and equitable Jurisdiction under Article 226 of the Constitution of India. Thus, the contention of respondent Nos. 3 to 7 having no locus standi to initiate arbitration proceeding under Rule 108 of the Purchase Rules, is not sustainable.

13. So far as the last contention about the absence of opportunity of hearing and denial of principles of natural justice to the petitioner are concerned there is no pleading in the writ petition to this effect. On the contrary in paragraph 25 of the writ petition it has been mentioned as follows :

"25. That the Deputy Cane Commissioner fixed 2 or 3 dates for hearing thereafter and ultimately passed order dated 17.9.1997 holding that the petitioner has committed default in purchasing cane and is liable to pay a sum of Rs. 1,16,550 as compensation to respondent Nos. 3" to 7. A true copy of this order dated 17.9.1997 is being annexed and is marked as Annexure-17 to this writ petition."

14. The amount of compensation payable to respondent Nos. 3 to 7 has been determined by respondent No. 1 strictly in accordance with clause 6 of the agreement which fixes the liability of the second party, i.e., to the sugar mill, cane growers co-operative society which amounts to actual price of the quantity of the sugar cane which the sugar mill fails to purchase. It was in accordance with this principle that respondent No. 1 had estimated the amount of sugar cane which was standing at specific areas of the plots of respondent Nos. 3 to 7. The total sum so determined, i.e., Rs. 1,16,550, is also not unreasonable or inordinately high.

15. Before parting it must be mentioned that it is deeply regrettable that economically strong sugar mills resort to such hyper-technical arguments for defeating Just claims of poor cultivators, by questioning the jurisdiction of empowered authorities, or the right of the poor cultivator to prefer the claim, or by raising artificial pleas of violation of natural justice. Very often the co-operative society which receives commission from the factory sides with the powerful sugar mill, leaving its poor farmer members high and dry. In this view of the matter, apart from the legal replies to the pleas raised by the petitioner sugar mill which have been given hereinabove, in equity also this is not a case calling for interference by the High Court in its extraordinary Jurisdiction under

Article 226 of the Constitution of India. The result is that the writ petition preferred by the Gangeshwar sugar mill fails and is dismissed.

16. So far as Civil Miscellaneous Writ Petition No. 19819 of 1997 is concerned, almost seven years have expired since direction of this Court dated 11.6.1997 to enforce the order of the Cane Commissioner dated 28.5.1997 to compel the sugar mill to purchase the petitioners'' sugar cane and to supply the same to the nearby sugar mill, the same cannot be implemented at this stage. However, as the sugar mill has to pay compensation together with the reasonable interest in terms of the order of the Deputy Cane Commissioner, Deoria, dated 17.9.1997 no further orders are needed in this writ petition and it is disposed of accordingly. Thus, C.M.W.P. No. 32550/1997 is dismissed. The petitioner shall pay the amount fixed by the respondent No. 1 by this order dated 17.9.1997 together with interest @ 8% per annum from the date of order. In view of the order passed in C.M.W.P. No. 32550 of 1997 no separate orders are needed in C.M.W.P. No. 19819 of 1997.

