
(2009) 09 KAR CK 0003
In the Karnataka High Court
Case No : Writ Petition No. 31532 of 2008

India Sugars and Refineries Limited

APPELLANT

Vs

The Secretary to Government, Commerce and Industries
Department and Others

RESPONDENT

Date of Decision : 09-09-2009

Acts Referred:

Essential Commodities Act, 1955 — Section 3, 4, 7, 8

Citation : (2010) 1 KarLJ 638

Hon'ble Judges : Ajit J. Gunjal, J

Bench : Single Bench

Advocate : G.V. Shantaraju for H.N. Shashidhar, for the Appellant; R.K. Hatti, High Court Government Pleader for Respondents-1 to 6, V.P. Kulkarni, for Respondent-7, G.R. Andanimath, for Respondent-9, Rajashekhar R. Gunjalli, for Respondent-10 and Gode Nagaraj, for Respondents-11 to 13, for the Respondent

Judgement

Ajit J. Gunjal, J.—The bone of contention between the petitioner and the respondents is a food stuff called sugar which has turned out bitter due to the insistent fight between the growers as well as the manufacturers. The core question which falls for consideration before this Court in this writ petition is whether the State is required to implement the relevant provisions of the Sugarcane (Control) Order, 1966, and also the relevant provisions of the Karnataka Sugarcane (Regulation of Distribution) (Hospet) Order, 1974 (for short, "the Hospet Order") which would relate to the petitioner's sugar factory. The matter arises in the following manner:

The petitioner is a sugar factory. Respondents 1 to 6 according to the petitioner are the authorities who have to implement the statutes and rules. Respondent 7 is a Raitha Sangha which according to them takes care of several sugarcane growers in the area which is called as reserved area from which the petitioner-factory draws sugarcane and respondents 8 to 10 are the recipients of sugarcane from the area reserved for the petitioner's sugar factory. Respondents 11 to 13 are growers. The petitioner-company was established in the year 1933.

According to them, it has crushing capacity of 2500 tonnes per day. It is the case of the petitioner that it has been crushing sugarcane since last 73 years i.e., from the date of its inception. Such sugar factory has a reserved area as defined under the Hospet Order. The sugarcane is supplied from the said area which is disclosed in Schedule I as per Clause 3(2) of the said Hospet Order. It appears everything was running smoothly till certain point of time i.e., till the year 2002. Thereafter, it appears acrimony started between the petitioner and the sugarcane growers. It appears there was a fall in sugar price in the open market during the year 2002, 2003 and 2007. Several sugar factories had a set back. But, however, the petitioner-company was able to discharge about 16 crores loan to the KSSIDC and BDCC Bank during the sugar seasons 2004-05 and 2005-06. They would claim that it is not in arrears for the previous sugar seasons. It is not in dispute that the petitioners are due to sum of Rs. 1.48 crores for the season 2002-03, a sum of Rs. 75 lakhs for the season 2003-04 and there are no dues for the seasons 2004-05 and 2005-06. For the season 2006-07, the dues are to the tune of Rs. 6.3 crores. It is submitted at the bar by the petitioner that insofar as two years i.e., 2002-03 and 2003-04, the matter is pending adjudication before the Apex Court. Insofar as the amount due for the year 2006-07, the matter is pending before the Cane Commissioner. To appreciate the controversy in question, one is required to refer to certain provisions of the Essential Commodities Act, 1955 (for short, "the Act") and the Sugarcane (Control) Order, 1966 (for short, "the Control Order"). It is not in dispute that sugar is treated as an essential commodity. The statement of objects and reasons would indicate that the Act would apply to two broad categories viz., (a) coal, textile, iron and steel, paper, etc., which are products of industries under Union control, and (b) foodstuffs, cattle fodder, etc., which are not products of such industries. The definition of the sugar is also found in the Act which would define it as "any form of sugar containing more than ninety per cent, of sucrose, including sugar candy and other kinds of sugar". The powers to control production, supply, distribution, etc., of sugarcane is to be found in Section 3 of the Act. The penal provisions for violations of the statutory provisions of the Act are to be found in Sections 7 and 8 of the Act. Before advertng to the other provisions relating to sugar control as well as the Hospet Order, it is necessary to note the contentions of Mr. Shantharaju, learned Senior Counsel appearing for the petitioner, Mr. V.P. Kulkarni, learned Counsel appearing for respondent 7, Mr. Andanimath, learned Counsel appearing for respondent 9 and Mr. R.K. Hatti, learned Government Pleader appearing for respondents 1 to 6.

2. Mr. Shantharaju, learned Senior Counsel at the outset submits that it is not in dispute that the sugar is an essential commodity as defined under the Act. The production of sugar is on the basis of the sugarcane supplied by the growers. Indeed, certain provisions of the Act are already referred to earlier but however he submits that the Control Order, would take over from the essential commodities as to the manufacturing of the sugar. He would press into service clause regarding the fixation of price as defined under Clause 2(g) and the

reserved area under Clause 2(j). The minimum price of sugarcane payable by producers of sugar is found at Clause 3 and Clause 3(2) would say that no person shall sell or agree to sell sugarcane to a producer of sugar or his agent, and no such producer or agent shall purchase or agree to purchase sugarcane, at a price lower than that fixed under Sub-clause (1) and Sub-clause (3) would indicate that where a producer of sugar purchases any sugarcane from a grower of sugarcane or from a sugarcane growers' co-operative society, the producer shall, unless, there is an agreement in writing to the contrary between the parties, pay within fourteen days from the date of delivery of the sugarcane to the seller or tender to him the price of the cane sold at the rate agreed to between them. He would also press into service Sub-clause (8) of Clause 3 regarding the mode of recovery if the amount due to the sugarcane growers is not paid. He would also press into service Clause 5-A which would relate to additional price for sugarcane purchased on a specific date. According to Mr. Shantharaju, learned Senior Counsel, Clause 6 of the Control Order on which the entire gamut of the case would revolve inasmuch as power to regulate distribution and movement of sugarcane. He would submit that every sugar factory will have a reserved area having regard to the crushing capacity of the factory, the availability of sugarcane in the reserved area and the need for production of sugar. Thus, according to him, pursuant to the Hospet Order, certain area is earmarked for the petitioner's sugar factory. The grievance of the petitioner is that they are not getting enough sugarcane from the growers and the same is being siphoned and being made use of by respondents 8 to 10 inasmuch as sugarcane which was legitimately that of the petitioner is stealthily diverted to these factories. Thus, he submits that there is a clear violation of the statutory provisions of the Act, the Control Order and also the Hospet Order. Hence, he submits that a direction in the nature of a writ of mandamus be issued to the Competent Authority to deal with this matter and to enforce the provisions of the Act. Indeed, Mr. Shantharaju, learned Senior Counsel would also contend that all outstanding dues which are payable to the sugarcane growers is already been paid and if there is any amount due, the matter is pending adjudication before the Competent Authorities. But, however, his main submission is that the statute and orders are required to be implemented by the machinery of the State.

3. Mr. Kulkarni, learned Counsel appearing for respondent 7 i.e., the representative of the sugarcane growers vehemently submits that as of now the petitioner-factory is due a substantial sum to the tune of Rs. 9.5 crores. He submits that the matters are pending before the various authorities for adjudication of the amount due to the sugarcane growers. His main plank of argument is that the writ petition has become infructuous inasmuch as the direction which is sought is for the crushing season 2008-09 which is long over. Hence, he submits that the question of granting the relief directing the State machinery to implement several orders and the statute does not arise at all. He further submits that the sugarcane growers cannot be held for ransom and seek a direction to supply the sugarcane to the petitioner-factory when the company

itself is in arrears and a large sum of money is due to the growers. Thus, he submits that seeking a direction to the Competent Authority to enforce the Control Order, itself is a process of compelling the growers to supply sugarcane to the factory when the farmers themselves have yet to receive their legitimate dues.

4. Mr. Andanimath, learned Counsel appearing for respondent 9 submits that there is no prohibition in the Control Order inasmuch as respondent 9 is prevented from receiving the sugarcane from the farmers outside the area which is reserved for the 9th respondent-factory. He farther submits that if any action is sought to be taken against them by enforcing the statutes, it would amount to double jeopardy inasmuch as the petitioner has already lodged a complaint as contemplated under the Act as well as under the general penal provisions. Hence, he submits that for some alleged offence, 9th respondent cannot be prosecuted twice.

5. Mr. Kulkarni, would submit that in the absence of an agreement between the company as well as the growers, the question of supplying the sugarcane from the reserved area to the petitioner-factory does not arise.

6. Mr. R.K. Hatti, learned Government Pleader submits that the prayers sought for in the writ petition does not survive for consideration. He submits that the Competent Authority to examine this matter and to implement the statute is the Deputy Commissioner-respondent 3 inasmuch as the penal provisions for violation of any of the provisions which should be relatable to the Act are to be done by the Deputy Commissioner.

7. Having regard to the submissions one will have to examine whether the petitioner is entitled for the relief which he has sought. Indeed, certain provisions of the Act have been referred to earlier. It has to be noticed that the Control Order was promulgated pursuant to the powers conferred u/s 3 of the Act making certain provisions for maintaining the reserved price and a reserved area so that the factories can run without any hindrance or interruption. Indeed, we are not really concerned as to the price control in the case on hand. What is essential and required to be looked into is whether the sugarcane which is produced in the reserved area can be diverted to the other sugar factories. Indeed, in this regard, clause (2)(j) would define what is reserved area:

"Reserved Area" means any area where sugarcane is grown and reserved for a factory under Sub-clause (l)(a) of Clause 6.

Clause 6 would relate to and speak about power to regulate distribution and movement of sugarcane. It would read as under:

6. Power to regulate distribution and movement of sugarcane.-(1) The Central Government may, by order notified in the Official Gazette.:

(a) reserve any area where sugarcane is grown (hereinafter in this clause referred to as "reserved area") for a factory having regard to the crushing

capacity of the factory, the availability of sugarcane in the reserved area and the need for production of sugar, with a view to enabling the factory to purchase the quantity of sugarcane required by it;

(b) determine the quantity of sugarcane which a factory will require for crushing during any year;

(c) fix, with respect to any specified sugarcane grower or sugarcane growers generally in a reserved area, the quantity or percentage of sugarcane grown by such grower or growers, as the case may be, which each such grower by himself, or, if he is a member of a co-operative society of sugarcane growers operating in the reserved area, through such society, shall supply to the factory concerned;

(d) direct a sugarcane grower or a sugarcane growers' co-operative society, supplying sugarcane to a factory, and the factory concerned to enter into an agreement to supply or purchase, as the case may be, the quantity of sugarcane fixed under paragraph (c);

(e) direct that no gur (jaggery) or khandsari sugar or sugar shall be manufactured from sugarcane except under and in accordance with the conditions specified in the licence issued in this behalf;

(f) prohibit or restrict or otherwise regulate the export of sugarcane from any area (including a reserved area) except under and in accordance with a permit issued in this behalf.

(2) Every sugarcane grower, sugarcane growers' co-operative society and factory to whom or to which an order made under paragraph (c) of Sub-clause (1) applies, shall be bound to supply or purchase, as the case may be, that quantity of sugarcane covered by the agreement entered into under the paragraph and any wilful failure on the part of the sugarcane grower, sugarcane growers' co-operative society or the factory to do so, shall constitute a breach of the provisions of this Order:

Provided that where the default committed by any sugarcane growers' co-operative society is due to any failure on the part of any sugarcane grower, being a member of such society, such society shall not be bound to make supplies of sugarcane to the factory to the extent of such default.

Clause 6(I)(a) would refer to some specified area is required to be reserved for a factory having regard to the crushing capacity of the factory vis-a-vis the availability of sugarcane in the reserved area so that the factory is able to purchase the required quantity of sugarcane from the reserved area. Clause 6(I)(b) would relate to the determination regarding the quantity of sugarcane required for a factory to function full steam. Clause 6(I)(c) would also relate to the purchase of the sugarcane from the reserved area. Indeed, it has to be noticed that there is a provision in the clause itself which would relate to an agreement to be entered into between the growers as well as the factory in regard to the price as well as the supply of sugarcane and any variation and

departures from the agreed terms would warrant and constitute the breach of the provisions of Clause 6. On the basis of this Sugarcane Order, Annexure-A has been promulgated which would essentially relate to the petitioner's factory. Most of the clauses which are found in the sugarcane control are also reproduced in the Hospet Order. Clause 3 would relate to the determination of the quantity of sugarcane required by the factory and preservation of the area for supply of sugarcane. The supply of the sugarcane is always relatable to the capacity of the factory to crush the sugarcane. As on 1974, the capacity of the petitioner's factory was 1500 tonnes per day and the quantity of sugarcane required by the factory during the year was about 2,40,000/- tonnes. The Court is informed that the crushing capacity as well as the supply is almost double over a period of years. Indeed, it has to be noticed that Sub-clause (6) of the Hospet Order prohibits the export taking out of the sugarcane from the reserved area except in accordance with the conditions of the permit issued to the Deputy Commissioner in Form 1 of Schedule II. Indeed, Schedule I would relate to the reserved area for supply of sugarcane to the petitioner-factory. A perusal of Clause 6 of the Hospet Order mandates and prohibits the export of sugarcane from the reserved area and can be exported only with the permission of the Competent Authority who is the Deputy Commissioner. Indeed, neither the learned Counsel for the petitioner nor the respondents are in a position to submit that Clause 6 has been complied and they are permitted to take the sugarcane from outside the reserved area. It is no doubt true Mr. Andanimath, learned Counsel appearing for respondent 9 submitted that indeed there is no prohibition or restraint on respondent 9 from purchasing the sugarcane from outside the reserved area for the 9th respondent-factory which would tacitly admit that they have purchased the sugarcane from outside the reserved area and need not necessarily from the reserved area of the petitioner. The law in this regard as to the importance of the reserved area for a particular sugar factory has been set at rest by the Apex Court in the case of U.P. Co-operative Cane Unions Federations Vs. West U.P. Sugar Mills Association and Others etc. etc., wherein the Apex Court has observed that a sugar factory normally runs in shifts for the whole day during the crushing seasons and it needs a continuous supply of freshly harvested sugarcane according to its daily crushing capacity which should be spread over the entire crushing season of about six months. The law as declared by the Apex Court would clearly indicate that the reservation of a particular area ensures the supply of the entire sugarcane grown to the factory in whose favour it has been reserved. In the case on hand, it has to be noticed that pursuant to Hospet Order, certain villages in the area are reserved for the purpose of the petitioner-factory inasmuch as the growers of the sugarcane in the said area are required to supply the sugarcane grown by them either through the co-operative society or individually to the petitioner's factory.

8. The next question would be whether it would be a voluntary act of supplying or there must be an agreement between the growers and the factory for supply of the sugarcane. Indeed, in this regard, Sub-clause (2) of Clause 6 may not

really mandate but however there is an indication that there must be an agreement in respect of the quantity of sugarcane to be supplied to the factory. Indeed, a perusal of the said provision along with Sub-clause (I)(d) does give an indication that there must be an agreement between the factory as well as the grower for supply of the sugarcane. But, however, the said clause does not spell out as to the price which is required to be fixed. Indeed what is required to be fixed is the quantity of sugarcane to be supplied by the grower to the factory. To my mind, the agreement can be only to that extent.

9. This takes us to the relief which is sought for by the petitioner indeed, in this regard when posed with a question to the learned Government Pleader, Mr. Hatti, he submits that the Competent Authority to enforce the Control Order vis-a-vis the Act is the 3rd respondent-Deputy Commissioner. Indeed, it is submitted by Mr. Kulkarni, learned Counsel for respondent 7 indicating that the entire Act is silent in respect of implementing authority inasmuch as there is no indication in the Act at all as to which of the authorities are to implement the statutory provisions of the Act when there is any violation of the Control Order.

10. Indeed in this regard certain provisions of the Act are also required to be looked into. Section 7 of the Act would relate and speak about the penalties inasmuch as if any person contravenes any order made u/s 3 various punishments are prescribed. Section 8 is in respect of the attempts and abetment inasmuch as if any person who attempts to contravene or abets a contravention is also liable to be prosecuted. The moot question is as to the implementing authority.

11. Section 4 of the Act would speak about the imposition of duties on the State Government and Section 5 would relate to the delegation of powers. Section 5(a) would refer to such officer or authority subordinate to the Central Government and (b) would relate to such State Government or such officer or authority subordinate to a State Government as may be specified in the direction. Indeed, in this regard, it is brought to my notice that a notification has been promulgated way back on 16-7-1966 to be precise indicating that the Clauses 6, 7, 8 and 9 of the Control Order shall be exercisable also by the State Government including the then State of Mysore and the Cane Commissioner etc.

12. A perusal of the notification and if it is read with Sections 4 and 5 of the Act as well as Clause 11 of the Control Order would indicate or at least would point out to the fact that the Deputy Commissioner will be seized of the matter and is required to implement the provisions of the Act. Indeed, this can also be gathered from Clause 6 of the Hospet Order inasmuch as unless the permission or the permit issued by the Deputy Commissioner in Form 1 of Schedule II, the growers cannot export the sugarcane outside the reserved area which would necessarily mean that if any power is vested with the Deputy Commissioner for relaxing the condition, it is also within his powers to prosecute if there is any violation of the Control Order or under the Hospet Order. Thus, I am of the view that it would be the Deputy Commissioner who is required to implement or

enforce the statute and the several control orders under the Sugarcane (Control) Order, 1966.

13. This takes us next to the question whether the petitioner is entitled for any of the reliefs sought for. Indeed, in this regard, there is a lost of acrimony between the petitioner and respondent 7 who represents the sugarcane growers. It is no doubt true that a contention was taken that respondent 7 is not a recognised society notwithstanding the fact that it is registered under the Societies Registration Act. Indeed, it is not open for the petitioner at this point of time to contend in this petition that they do not represent the sugarcane growers inasmuch as in most of proceedings before this Court on an earlier occasion they have been made parties and have been heard. Indeed they are also parties before the Cane Commissioner where the matter is pending adjudication regarding the amount payable by the petitioner to the sugarcane growers. Be that as it may, for the purpose of disposal of this writ petition, we will proceed on the premise that it is a body which represents the interest of the sugarcane growers.

14. The first prayer relates to issuance of writ of mandamus directing respondents 1 to 6 to stop illegal transport etc., insofar as the relief which is sought for by the petitioner in this writ petition, the petitioner has sought for a host of directions to the concerned authorities including launching of prosecution as against the errant sugarcane growers as well as the recipient of the sugarcane from the area reserved for the petitioners. In this regard, a writ of mandamus would certainly cannot be issued against the growers inasmuch as if such a direction is issued, the factory would be in jeopardy. Hence, Mr. Shashidhar, learned Counsel submits that implementation is sought not against the growers but as against the recipient of the sugarcane from the area which is reserved for the petitioner's factory. Insofar as respondent 8 is concerned, respondent 8 is not present before this Court though served. He has not filed statement of objections traversing what is stated in the writ petition. Insofar as respondent 9 is concerned, they are already before a Criminal Court. It is brought to my notice that a private complaint is lodged by the petitioners as against respondent 9 and process has been issued which was the subject-matter of a criminal petition but however the issuance of process is set aside and the matter is remanded for proper compliance of Section 200 of the Criminal Procedure Code, 1973. Thus, to that extent they have already been prosecuted and the question of their being prosecuted for the same offence inasmuch as for receiving sugarcane from the area reserved for petitioner's factory would not arise inasmuch as it would amount to double jeopardy.

15. Insofar as respondent 10 is concerned, learned Counsel would contend that they have not received any sugarcane from the reserved area meant for petitioner-factory. There is no specific averment as against them in the present writ petition but nevertheless they were impleaded at a subsequent stage of the proceedings. Hence, the following order is passed:

Let a writ of mandamus be issued to the 3rd respondent to implement the various orders of Sugarcane (Control) Order insofar as respondents 8 and 10 are concerned. Needless to say such implementation shall be after notice to all concerned including respondent 7.

All other questions relating to the amount due to the growers of the sugarcane in the reserved area of the petitioner-factory are left open and are required to be adjudicated in a pending proceedings.

16. With the above observations, the writ petition stands disposed of.

17. Mr. R.K. Hatti, High Court Government Pleader is permitted to file memo of appearance within four weeks.