(2009) 04 UK CK 0008

In the Uttarakhand High Court

Kashipur Sugar Mills Ltd. APPELLANT

Vs

State of Uttarakhand and Others RESPONDENT

Date of Decision : 15-04-2009

Acts Referred:

General Clauses Act, 1897 — Section 21

Citation : (2009) 04 UK CK 0008

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Judgement

Sudhanshu Dhulia, J.—The petitioner is a Sugar Mill. The grievance of the petitioner is that although it has certain areas reserved in his favour, the bonded sugar cane of this reserved area is being transferred to respondent No. 4, which is a power crusher as well as a distillery.

2. The contention of the petitioner is that a licence was given to respondent No. 4 by the State Government u/s 4 (3) of the U.P. Sugar Cane (Purchase Tax) Act (hereinafter referred to as "the Act"), 1961. At the time of renewal of this licence, the petitioner filed its objection stating that the licence be not renewed because the bonded sugar cane, which is reserved for the sugar mill of the petitioner is being illegally diverted to the Power Crusher of respondent No. 4. There were other allegations as well made by the petitioner against the respondent No. 4. The concerned authority however rejected the objections of the petitioner. Aggrieved by the said rejection dated 27.9.2008, petitioner filed an appeal before the Cane & Sugar Commissioner, Government of Uttarakhand/ respondent No. 2 u/s 4 (4) of the Act, which was well within the rights of the authority concerned. Section 4 (4) of the Act reads as under:

(4) Any person aggrieved by an order of the Sugar Commissioner under Sub-section (3) may, within thirty days from the date of intimation of the said order to him, prefer an appeal to the State Government, whose decision thereon shall be final.

3. The appellate authority after issuing notice to respondent No. 4 passed an order on 30th January, 2009, whereby four directions were given. Those directions are as follows:

1. The Respondent No. 1 Cane & Sugar Commissioner Uttarakhand shall issue a Show Cause Notice to the Respondent No. 2 M/s India Glycols Ltd., Kashipur, District Udham Singh Nagar as to why action to cancel the License dated 27.09.2008 issued to them be initiated.

2. The Respondent No. 1 shall ensure word by word compliance of orders passed by the Hon''ble Supreme Court in Civil Appeal No. 4425/2007 (SLP No. 473/2006). In case any situation of contempt arises it would be the total responsibility of Cane & Sugar Commissioner, Uttarakhand.

3. The Respondent No. 1 shall ensure compliance of the Hon''ble BIFR order dated 1.2.2008 and complying the order shall initiate all necessary action immediately. As far as the allegations mentioned by the Appellant in appeal Page No. 9 and 10 against the Respondent No. 1, 2 and 3 and the prayers in this regard, in this connection I appoint a two Member''s Committee. In this Committee No. (1) a Senior Faculty member shall be nominated by the Director, National Sugar Institute, Kanpur, Uttar Pradesh. No. (2) one Officer of the rank of Additional Secretary of the State Government, who has good knowledge of Sugar Industry even if he is presently working in some other Department. For the Second Member I nominate Shri N.K. Joshi, IAS, Additional Secretary, Uttarakhand Government, Health and Education Department. He shall be the Chairman of this Committee and this Committee shall submit its enquiry report within 15 days of nomination of first member of the Committee.

4. The Respondent No. 1 shall ensure that the Respondent No. 2 is provided supply of quantity of sugarcane in accordance with the basic allotment. The Respondent No. 1 shall ensure supply of allotted 10 lac quintals of cane to the Respondent No. 2 as per his Order No. 3055/2009 dated 06.01.2009. It has been mentioned in the application filed today by the Respondent No. 4 that Sugar mills of the State are getting less quantity of cane against their allotment. The Respondent No. 1 shall ensure necessary action to see that the Respondent No. 2 does not make illegal purchase of sugarcane more than the original basic allotment and undesirable and illegal crushing is not allowed.

4. Consequent to the said order dated 30th January, 2009, the order was passed on 10.2.2009 by the same appellate authority reviewing its earlier order dated 30.1.2009 dismissing the appeal of the appellant i.e. the present petitioner.

5. Now the petitioner has challenged the legality of the order dated 10.2.2009 on two grounds firstly that the order is wholly without jurisdiction as the appellate authority was not vested with the powers of review. The powers of review are statutory powers and in absence of any such power with the concerned authority, the order could not have been reviewed and in fact the order dated 30.1.2009 has attained finality. In reply to this contention of the petitioner, respondent No.

4 has relied upon Section 21 of the General Clauses Act, 1897, which reads as under:

21. Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws.-Where, by any [Central Act] or Regulation, a power to [issue notifications,] orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any [notifications,] orders, rules or bye-laws so [issued].

6. It is an admitted case of both the parties that the second order, which was passed by the appellate authority was passed without hearing the petitioner and the order being quasi judicial in nature hearing was absolutely mandatory before such orders could have been passed. On this ground alone, the order dated 10.2.2009 is liable to be quashed. The order dated 10.2.2009 is therefore quashed.

7. A perusal of all the directions given in order dated 30.1.2009 shows that when such orders were passed there was no representative of the respondent No. 4 present before the concerned authority yet the records also show that notices were sent to respondent No. 4 and opportunity was given by the appellate authority before passing such an order.

8. Be that as it may, the perusal of all the four directions are for the Cane Commissioner to pass an order in accordance with the provisions of the Act after giving a show cause notice to respondent No. 4. In fact regarding direction No. 2 and 4, counsel for the respondent No. 4 has no objection and he has only objection regarding direction No. 1 and 3. The objection of the counsel for the respondent No. 4 regarding direction No. 3 is entirely misplaced inasmuch as the appellate authority had only directed that the Cane Commissioner shall ensure compliance of the BIFR''s order dated 1.2.2008 initiating all necessary action immediately and it further states that the allegations of the petitioner regarding the diversion of the bonded sugar cane to respondent No. 4 must be looked into by a committee which has been constituted. This Court finds that the directions are perfectly in order and with a view to get to the truth of the matter, therefore, no interference needs to be called for except that while complying the order of the BIFR dated 1.2.2008, the concerned authority shall also keep the interest of the State in mind. The counsel for the respondent No. 4 further states that inter alia, it has been stated in the order of the BIFR dated 1.2.2008 that the petitioner shall be free to export entire molasses produced by it without ceiling limits. It goes without saying that in case there is any existing policy of the State Government regarding diversion of export of molasses, the same is liable to be looked into by the concerned authority as well. With this proviso or clarification, this Court finds no good ground for interference as far as direction No. 2, 3 and 4 are concerned. Learned Counsel for the respondent No. 4 has pointed out that regarding compliance of the BIFR''s order dated 1.2.2008, a writ petition has been field by the State Government, which is subjudice before this Court. It goes

without saying that in case, the matter is subjudice before this Court, all action of the concerned authorities shall be subject to the decision or order of this Court.

9. Learned Counsel for the respondent No. 4 raised objection on direction No. 1, whereby a direction was given by the appellate authority to the Cane Commissioner to initiate procedure regarding the cancellation of licence, which was granted to respondent No. 4. It is clarified that no action will be taken by the respondent No. 2 i.e. the Cane & Sugar Commissioner, Uttarakhand regarding direction No. 1 however in case there is any finding by the Committee on these allegation, the Cane Commissioner shall thereafter initiate proceedings regarding cancellation of licence, as directed presently in direction No. 1, of the Appellate Authorities'' earlier order.

10. The order dated 30.1.2009 is therefore modified to the extent referred above.

11. With the aforesaid directions, writ petition is disposed of. No order as to costs.

