

(2006) 02 AHC CK 0112

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 7420 of 2006

Kisan Sahkari Chini Mills Ltd.

APPELLANT

Vs

State of U.P. and Cane Development, Cane Commissioner,
Cooperative Cane Development Union Ltd. and Sherwani
Sugar Syndicate Ltd.

RESPONDENT

Date of Decision : 16-02-2006

Acts Referred:

General Clauses Act, 1897 — Section 21

Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1953 — Section 15(1), 16

Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Rules, 1954 — Rule 22

Citation : (2006) 3 AWC 2535

Hon'ble Judges : Vikram Nath, J;Sushil Harkauli, J

Bench : Division Bench

Advocate : Ashwani K. Mishra, for the Appellant; Navin Singh, Vipin Singh, Ajeet Ray and Ravindra Singh and S.C., for the Respondent

Final Decision : Allowed

Judgement

1. We have heard learned Counsel for the petitioner. The respondent No. 4 had filed a caveat and was served with a copy of the writ petition a week ago on 7-2-2006. Shri Navin Sinha, senior advocate assisted by Shri Ajeet. Ray appearing for the respondent No. 4 has been heard at length. We have also heard Shri Ravindra Singh for respondent No. 3 and the Standing Counsel for the remaining two respondents. After the conclusion of hearing Sri Sinha was asked whether the respondent No. 4 wants to file a-counter affidavit or wants final disposal of the writ petition. Sri Sinha stated that the respondent No. 4 does not propose to file any counter affidavit because the material facts are not in dispute.

2. In the original order of reservation of areas by the Cane Commissioner dated 21-10-2005, the respondent No. 4 was given 30 purchase centers; and the purchase center known as Guleria was not given to respondent No. 4, but was "given to the petitioner. The respondent No. 4 preferred an appeal to the State

Government demanding Guleria and two other purchase centres.

3. In the appeal the State Government by order dated 16-12-2005 remitted the matter back to the Cane Commissioner for reconsideration. Pursuant the remand, the Cane Commissioner heard the parties again and passed a detailed order dated 28-12-2005 saying that none of the eight criteria mentioned in (a) to (h) of Rule 22 of The U.P. Sugarcane (Regulation of Supply & Purchase) Rules, 1954 were shown to be in favour of the Respondent No. 4. The Cane Commissioner therefore maintained the original reservation. The respondent No. 4 did not challenge that order dated 28-12-2005 by way of appeal or by a writ petition.

4. Thereafter, on 11-1-2006 the respondent No. 4 applied to the Cane Commissioner seeking setting aside (review) of the order dated 28-12-2005, again demanding the same three purchase centres including Guleria, making an offer of surrendering 21 out of the 30 purchase centers reserved for the respondent No. 4 on the ground that the respondent No. 4 was finding it difficult to purchase the cane from those 21 centers.

5. By the order dated 23-1-2006 (impugned in this writ petition) the Cane Commissioner altered the reservation of the purchase centers, allotted the 21 purchase centers surrendered by the respondent No. 4 to other sugar mills, and bifurcated the area of Guleria purchase center into two parts, took away one part of the said purchase center from the petitioner and assigned the same in favour of respondent No. 4.

6. During the course of arguments before lunch it was pointed out by the Court to the parties that the writ petition raises inter alia the following questions:

(1) Whether the impugned order to the Cane Commissioner dated 23-1-2006 amounts to review of his earlier decision dated 28-12-2005?

(2) Whether the order of reservation of areas passed by the Cane Commissioner is a quasi judicial order and if so whether the Cane Commissioner had the power of review?

7. The issues having been crystalised, the parties were given time to study/think over the issues, and the case was adjourned and hearing was resumed after lunch.

8. It has been held by the Supreme Court in *The Purtabpore Co., Ltd. Vs. Cane Commissioner of Bihar and Others*, that the decision of the Cane Commissioner in a dispute relating to reservation of areas between two parties is a quasi judicial order.

9. In quasi judicial matters there is no inherent power of review except on the limited ground of fraud. The power of review is to be conferred specifically by statute or Rules on quasi judicial authorities and tribunals. Section 21 of the General Clauses Act which has been relied upon from the side of respondent no

4, does not apply to quasi judicial orders.

10. Faced with this difficulty the learned Counsel for the respondent No. 4 referred to Section 15(1)(b) of the U.P. sugarcane (Regulation of Supply and Purchase) Act, 1953. The said Section 15(1) is, reproduced below:-

15. Declaration of reserved area and assigned area.- Without prejudice to any order made under Clause (d) of Sub-section (2) of Section 16 the Cane Commissioner may after consulting the Factory and Cane-growers" Co.) operative Society in the manner to be prescribed:

(a) reserve any area (hereinafter called the reserved area); and

(b) assign any area (hereinafter called the asserved area);

and for the purposes of the supply of cane to a factory in accordance with the provisions of Section 16 during one or more crushing seasons as may be specified and may likewise at any time cancel such order or alter the boundaries of an area so reserved or assigned,

(2)....

11. Learned counsel for the respondent No. 4 submits that the impugned order has been passed by the Cane Commissioner not in exercise of a purported power of review, but in exercise of the power conferred by the words of the Statute underlined above.

12. Having considered the said statutory provision, we are of the opinion that having regard to the purpose and objective of the legislation, the aforesaid (underlined) words of the Statute are not intended to give an unrestricted free hand to the Cane Commissioner to keep revising his reservation orders on any slight pretext. Any other interpretation would not only have the risk of mischief on part of sugar factories, but would also not be in the interest of the cane growers. One of the advantages of long term reservation is to give incentive to the factories to help in developing their reserved areas for better yield. Therefore the power conferred by the said (underlined) words can be exercised only in the event of some major change, which may have taken place in the situation subsequent to the original reservation order. " For example, where an area has been reserved or assigned in favour of. a particular sugar mill which has subsequently expressed its unwillingness or inability to continue with any part of its reserved, or assigned area, in which case the part of the area may be assigned to another factory. Similarly, where for some subsequent unforeseen circumstances, a factory has become incapable of operating its reserved or assigned area. There may be other cases where exercise of the power may be justified on the part of the Cane Commissioner, but all such cases must relate to some subsequent major change in the situation and the power cannot be exercised merely because of a new line of thought on the part of the Cane Commissioner, or on the ground that there was some error (short of fraud) committed while passing the original order of reservation or assignment. At this

point we must clarify, that the first example given above would not include cases where a factory says that it wants to surrender part of its reserved area in exchange for other area, because this would open a back-door to review of reservation.

13. From the record, there does not appear to be any unforeseen insurmountable difficulty in purchasing cane from 21 centers by the respondent No. 4. It has not been shown that there was any such drastic change in the situation subsequent to the original reservation, which change caused any major difficulty (as distinguished from inconvenience) for respondent No. 4 in purchasing sugarcane from these 21 purchase centers which could not have been foreseen earlier by an experienced sugar factory owner or manager.

14. In the present case, as per the facts presently before us, Guleria was not reserved for or assigned to the respondent No. 4 initially. The attempt by the respondent No. 4 to get that area was rejected by the detailed order of the Cane Commissioner dated 28-12-2005. The respondent No. 4 acquiesced to the situation by not preferring an appeal or a writ petition against order dated 28-12-2005. The facts mentioned in the impugned order by which reservation has been altered by assigning part of Guleria to the respondent No. 4 are not based upon any major change in the situation subsequent to the order dated 28-12-2005 or even subsequent to the original order dated 21-10-2005. Merely saying that the respondent No. 4 is finding it difficult to purchase sugarcane from the 21 areas now proposed to be surrendered, is not a sufficient ground for the Cane Commissioner to review his original order of reservation, that too after he has once rejected such request by a detailed order.

15. There is no doubt that there will be some difficulty to the respondent No. 4 which we propose to pass because the 21 centers, which have surrendered by the respondent No. 4 have already been allotted to other sugar factories, who are not parties before us, but the respondent No. 4 has to blame itself for the situation, on account of its making this third attempt at snatching away the Guleria center from the respondent No. 4.

16. In view of the above facts and reasons, this writ petition is allowed and that part, of the impugned order dated 23.1.2006, (annexure 10 to this writ petition) which relates to Guleria purchase centre is quashed.

17. This order will not restrain respondent No. 4 from approaching the Cane Commissioner for return of all or any of the purchase centres, which have been surrendered by the respondent No. 4, but no such restoration should be made unless the affected parties are given an opportunity of being heard.