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(2006) 09 AHC CK 0232

In the Allahabad High Court

Case No : C.M.W.P. No. 58076 of 2006

Kisan Sahkari Chini Mills Ltd. — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 07-09-2006

Acts Referred:
Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1953 — Section 12, 12(2), 15, 15(2), 15(3)

Citation : (2006) 7 AWC 7347

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Advocate : Ashwani K. Misra, for the Appellant; S.D. Singh, Diptiman Singh and S.C., for the Respondent

Final Decision : Disposed Of

Judgement

S.U. Khan, J.—The Petitioner is an old sugar mill. Respondent No. 4 Triveni Engineering and Industries Ltd. is a new sugar mill which started manufacturing sugar during last crushing season of 2005-06 and in that season had effectively functioned for 48 days. The areas from where cane is procured by the two sugar factories are common or adjacent. This has given rise to the rivalry between the two to capture the same areas for having exclusive right to procure the sugar cane.

2. In order to regulate the supply of sugar cane to the sugar factories and to avoid or minimize such rivalry and its consequent adverse effect upon the sugar factories as well as cane growers U.P. Sugar Cane (Regulation of Supply and Purchase) Act, 1953 has been enacted (hereinafter referred to as "U.P. Act of 1953"). u/s 15 of the Act, concept of ''reserved area'' and ''assigned area'' has been provided. Section 15 (2) reads: "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". Similarly u/s 15 (3) of the Act it is provided

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"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".

3. A plain reading of the aforesaid provisions indicates that in reserved areas the factory concerned has got exclusive right as well as liability to purchase all the cane grown in that area which is offered for sale to it while in respect of assigned area only such quantity of offered cane is to be purchased which may be determined by the Cane Commissioner. From a bare perusal of the aforesaid two provisions it also implies that no area can be reserved for more than one factory, however an area may be assigned to more than one factory and quantity of the offered cane to be purchased by each of the factories from the assigned area may be determined by the Cane Commissioner. However, according to the learned Counsel for both the parties there is no major difference between reservations and assigning of areas to a particular factory and in respect of assigned areas also the factory is entitled and liable to purchase all the cane grown in that area which is offered for sale.

4. The cause of dispute between the two factories is the action of U.P. Cane Commissioner of taking out 21 cane growing areas from the list of areas which were for several previous years reserved with the Petitioner factory and assigning them to the factory of Respondent No. 4. The said orders were passed by the Cane Commissioner on 6.10.2006 and are contained in Annexures-3 and 4 to the writ petition. Annexure-3 is in respect of the Petitioner''s factory and Annexure-4 is in respect of factory of Respondent No. 4. However, in the schedules annexed alongwith the said orders it is mentioned that the disputed 21 areas have been assigned to both the factories.

5. The list of 21 disputed areas starts from Ratanpur I and ends with Pilkhna. In the order in respect of the Petitioner the said areas are mentioned in Khand II and in the order in respect of Respondent No. 4 they are mentioned in the Khand (1-Kha).

6. Under the Act of 1953 it is provided u/s 12 that the Cane Commissioner may for the purposes of Section 15 require the factory to furnish in specified manner an estimate of the quantity of the cane, which will be required by it during ensuing crushing season. u/s 12 (2) it is provided that Cane Commissioner after examining the estimate shall publish the same with such modifications, if any, as he may make. Under Sub-section (3) of the said Section it is provided that the estimate under Sub-section (2) may be revised by an authority to be prescribed. Similarly u/s 15 (4) it is provided that an appeal shall lie to the State Government against the order of the Cane Commissioner declaring reserved and assigned areas.

7. For the current crushing season (2006-07) a sort of uniform policy for the entire State for preparing the estimate of requirement u/s 12 of the Act was announced by the Cane Commissioner on 4.5.2006, copy of which is Annexure-6

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to the writ petition. Learned Counsel for the parties or the learned standing counsel have not been able to explain under which provision such policy may be framed. The only section, which may warrant framing of such policy therefore, remains Section 12 of the Act of 1953. In the said policy sugar mills were divided into four categories. The first three categories related to old sugar mills and the 4th one to the new sugar mills, which were going to start crushing/production for the first time in the crushing season of 2006-07. Learned Counsel for both the parties stated that the said policy was neither revisable nor appealable directly. However, I have got some reservations in accepting this contention. However this aspect need not be decided in this writ petition.

8. The Petitioner factory was covered under category I of the said policy. It was provided under category No. I that the estimate would be determined on the basis of daily average of cane crushed in the best month multiplied by 180 (180 days is the maximum period of crushing season). It was further provided that for determining the daily average that month from November to March will be taken into consideration in which the factory crushed the maximum sugar cane. For the factories in eastern U.P. instead of multiplier of 180, multiplier of 160 was to be used. However, we are not concerned with that as the factories in question are situate in western Uttar Pradesh (district Bulandshahr). Under the said policy neither capacity was relevant consideration nor the rate/percentage of drawal. No revision or appeal was filed against the said policy. Treating both the factories to fall under Category No. I, Cane Commissioner determined the estimate for both the factories on 5.8.2006 as follows:

Petitioner 46.80 lac quintals. Respondent No. 4 57.60 lac quintals

Through the said order dated 5.8.2006, requirement of 76 factories of Uttar Pradesh were determined. Petitioner''s factory was at serial No. 17 and Respondent No. 4''s factory at serial No. 19. Copy of the order dated 5.8.2006 is Annexure-7 to the writ petition. Against Annexure-7, in so far as it affected Respondent No. 4, revision was filed before the State Government by Respondent No. 4. Sri Subhash Chandra Trivedi, Special Secretary, Government of Uttar Pradesh, Sugar Industries Department III, allowed the revision on 7.9.2006. Copy of the said order is Annexure-I to the writ petition. Revision was filed u/s 12 (3) of the Act. In the order it is mentioned that representative of Cane Commissioner did not appear at the time of hearing and on his behalf no comments were filed against the revision application of Respondent No. 4. The revision was allowed on the ground that in the previous crushing season, i.e., 2005-06 Respondent No. 4 had started crushing for the first time and it had worked only for 48 days, hence it was not a safe criteria to multiply the daily average of the crushing of best month by 180 in the case of Respondent No. 4. It was also observed that Respondent No. 4 during the last crushing season could not get proper quantity of sugar cane due to delayed start of its factory and it was quite possible that the previous season which was trial season for Respondent No. 4, it could not work to its full potential. It was also observed that

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in the policy Cane Commissioner should have made a new category of the mills which started production in the previous season of 2005-06. In the said order it is also mentioned that in the previous season requirement of Respondent No. 4 was fixed at 66 lac quintals sugar cane.

9. Ultimately the matter was remanded to the Cane Commissioner, through the said order.

10. Right from 4th May, 2006 when policy was announced Mr. Rahul Bhatnagar is acting as Cane Commissioner. Learned Counsel for the Petitioner has vehemently argued that Mr. Rahul Bhatnagar is senior to Mr. Subhash Chandra Trivedi, Special Secretary and under the law no appeal or revision is maintainable before a junior officer. It has also been stated that Mr. Rahul Bhatnagar is also acting as Principal Secretary, sugar industries and Principal Secretary is senior to special secretary, the post, which is held by Sri Subhash Chandra Trivedi, who passed the order on revision. Alongwith counter-affidavit a Government order has been annexed, through which it has been provided that appeals and revisions under the Act of 1953 are to be heard by Special Secretary.

11. After the order of the revising authority dated 7.9.2006, the matter was reconsidered by Cane Commissioner, U.P. and the Cane Commissioner through order dated 27.9.2006 revised the estimate of Respondent No. 4 and enhanced the same from 57.60 lac qtls. to 79.20 lac qtls. Copy of the said order is Annexure-2 to the writ petition. In the said order it is clearly mentioned that in compliance of the order of the Government dated 7.9.2006, Cane Commissioner was re-determining the estimate of Respondent No. 4. For determining the estimate of Respondent No. 4 the Cane Commissioner evolved a new formula. Cane Commissioner held that the estimate shall be determined on the basis of 80 per cent of crushing capacity. In pursuance of this new formula the estimate was revised as aforesaid, i.e., to 79.20 lac qtls. Thereafter through orders dated 6.10.2006 (Annexures-3 and 4) the areas were reserved and assigned in accordance with the estimate of the Petitioner earlier determined and estimate of Respondent No. 4 determined through order dated 27.9.2006. Neither the Petitioner was heard at the stage of revision nor while passing the consequent order on 27.9.2006 by the Cane Commissioner.

12. In both the orders dated 6.10.2006 much emphasis has been laid on ''drawal'' factor while the order of revising authority does not refer to this factor at all. In the order relating to Petitioner''s factory it has been mentioned that in the previous season it worked for 108 days and drew only 24 per cent sugar cane from the areas reserved and assigned to it, and the total consumption was 27.21 lac qtls. It was expected and directed that during the current season the drawal of the Petitioner''s factory must be 55 to 65 per cent. Ultimately it was held that as the requirement was 46.8 lac qtls., hence applying the drawal percentage of 55 Petitioner factory required reservation/assignment of area producing sugarcane worth 85.09 lac qtls. On the basis of the said determination the aforesaid 21 areas were taken out from the list of areas which were reserved

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with Petitioner factory until previous crushing season and these 21 areas were assigned to the Petitioner''s factory as well as to the factory of Respondent No. 4. Taking the average of cane production in the district it was determined that 14970 hectares of cane production area would be required by the Petitioner''s factory. In para 8 of the order it was mentioned that Petitioner sugar mill as well as other concerned sugar mills had been heard alongwith cane cooperative societies and cane growers.

13. In the order dated 6.10.2006 pertaining to Respondent No. 4 (Annexure-4 to the writ petition) it as observed that Respondent No. 4 consumed 8.21 quintals sugar cane in the previous season @ 17 per cent drawal and the said factory worked for 48 days. It was expected and directed that Respondent No. 4 should draw 78 per cent sugar cane. On the said rate of drawal, it was determined that estimated requirement of 79.20 lac qtls. sugar cane could be fulfilled by reservation/assignment of area which is estimated to produce 101.54 lac qtls. sugar cane corresponding to 17864 hectares of sugar cane growing area. In the said order also it was mentioned that while passing the order sugar mill in question and other concerned sugar mills were heard alongwith cane growers and their societies the basis of the said formula the aforesaid 21 areas from Ratanpur I to Pilkhna were assigned to Respondent No. 3 in column No. 8 remarks column it was mentioned that most of the area were taken from the Petitioner-mill. Similarly in the schedule attached with the order of the said date, i.e., 6.10.2006 in respect of Petitioner the aforesaid 21 areas were mentioned to be given to Respondent No. 4. Petitioner has challenged the aforesaid orders of 6.10.2006 and 27.9.2006 and 7.9.2006. It has been mentioned that Respondent No. 4 has also filed appeal against order dated 6.10.2006 passed in its case before the State Government complaining that the aforesaid 21 areas should have exclusively been reserved/assigned to it and not assigned to both.

14. Learned Counsel for the Petitioner has also placed reliance upon Rule 22 of the rules framed under the Act 1953. According to said rule in reserving or assigning area to a factory or determining the quantity of cane to be purchased from an area by a factory u/s 15 of the Act, the Cane Commissioner may take into consideration the 8 factors, enumerated therein as (a) to (h). The said factors include distance of the area from the factory, facilities for transport, quantity of cane supplied in previous year, previous reservation and assignment of areas, quantity of cane to be crushed in factory, arrangements made by the factory in previous years for payment of cess, cane price and commission, the views of the cane growers and cane growers cooperative societies and the efforts made by the factory in developing the reserved/assigned area.

15. Learned Counsel for the Respondent No. 4 argued that to new factories this principle could not be applied otherwise there will be stagnation, new sugar factories will be discouraged and it will create monopoly in favour of existing factories. In this regard reference has been made to the judgment delivered on 23.3.2005 by Hon''ble Arun Tandon, J. in Writ Petition No. 12302 of 2005, DCM

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Shriram Industries Ltd., Unit Daurala Sugar Works and P.V. Bakre Vs. State of U.P. and Others, and judgment dated 25.1.2006 delivered by Hon''ble V.K. Shukla, J., in Writ Petition No. 2163 of 2006, Kisan Sahkari Chini Mills Ltd. Vs. State of U.P. and Cane Development, Cane Commissioner, Cooperative Cane Development Union Ltd. and Sherwani Sugar Syndicate Ltd., In the said writ petition the Petitioner''s dispute was with another factory M/s. Uttam Sugar Mills Bijnor. The matter was remanded in that writ petition to the State Government.

16. In the instant case also it is essential that the reservation/ assignment in respect of both the parties, i.e., the Petitioner and Respondent No. 4, should be made by one common order after hearing both of them on each and every point. However, the question is that the authority concerned/Cane Commissioner must be directed to keep in mind that principles while deciding the matter.

17. Before deciding the above question it is necessary to clear the position on alternative remedy of appeal. As appeal has been provided to a junior officer, hence it cannot be considered to be an absolute bar for exercise of writ jurisdiction. However, it is made abundantly clear that in this writ petition this question is not finally being decided as to whether appeal before a junior officer is maintainable or not. That question is left open to be decided in some other appropriate case. The other reason is that Revising Authority and Appellate Authority is the same authority. The Cane Commissioner had passed the impugned order on 6.10.2006 in pursuance of the remand order passed by the revising authority, hence there is not much sense in directing the Petitioner to approach the same authority by filing appeal. Hence, also remedy of appeal is not such efficacious remedy, which may impel the Court to dismiss the writ petition on the ground of alternative remedy. The rate/percentage of drawal was not mentioned as criteria in the policy dated 4.5.2006. If factories were to be pulled up for lesser drawal or treated favourably for the increased rate/ percentage of drawal, then necessary guidelines, provisions and directions for the same should have been included in the policy itself.

18. It has not been brought on record that for other sugar factories of Uttar Pradesh for reserving and assigning the areas after determination of their requirement through common order dated 5.8.2006 (Annexure-7 to the writ petition), drawal factor was taken into consideration or not and if it was considered then what percentage of drawal was applied and whether it was uniform or different for different factories.

19. The effect of the order of revising authority dated 7.9.2006 was that the factory of Respondent No. 4 was placed in the 4th category of ''New Mills'' as mentioned in the policy dated 4.5.2006. Under the policy estimate for those new factories which are to start their crushing operation in the season 2006-2007 was to be determined in accordance with crushing capacity and other capacities.

20. For new factories crushing capacity is an important factor while determining their requirement of sugar cane. However, crushing capacity is not the sole

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criteria otherwise new factory can very easily deprive the adjacent old factory of large junk of its reserved/assigned area. A new factory in its nascent stage has to suffer teething problem. It can only get increase in its reserved/assigned area gradually by showing consistent good performance.

21. Accordingly, Cane Commissioner is directed to decide the question of reservation/ assignment of the aforesaid 21 areas vis-a-vis the competing rival claim of Petitioner and Respondent No. 4. Specific reasons must be given for taking out the old reserved areas of Petitioner factory and reserving and assigning them to Respondent No. 4. The rate of drawal applied to the Petitioner-factory while reserving/ assigning the areas to it during last crushing season, if any, shall also be taken into consideration and if any departure is made therefrom, then reason for the same must be given. Similarly, if for reserving/ assigning the areas to other factories any rate of drawal was applied for the current season, then the same must also be taken into consideration.

22. Accordingly it is directed that the Cane Commissioner shall after hearing both the Petitioner as well as Respondent No. 4 shall re-determine the reserved and assigned areas of both the factories in the light of the observations made above. In respect of assigned areas, total quantity of sugar cane to be purchased u/s 15 (3) of the Act shall be determined by the order itself. The views of cane growers and cane growers'' societies, which were already considered by the Cane Commissioner, as is evident from the orders dated 6.10.2006 shall also be taken into consideration and if considered necessary fresh views may be invited. However, the Cane Commissioner shall positively decide the matter within a week as crushing season has started and time is running out. Both the parties are directed to appear before the Cane Commissioner alongwith a certified copy of this order on 10.11.2006. Learned standing counsel shall also immediately inform the Cane Commissioner about this order and send a copy of the judgment to him. Office is directed to supply a copy of this order to the learned standing counsel free of cost within two days for immediate communication to the Cane Commissioner.

23. In view of the above order appeal filed by Respondent No. 4 before State Government against the order dated 6.10.2006 has become infructuous.

24. Writ petition is accordingly disposed of. Impugned orders in respect of aforesaid 21 areas are quashed. However, until passing of fresh order by Cane Commissioner impugned orders shall be deemed to be in operation as if passed by this Court as an interim measure.

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