(2011) 01 AHC CK 0287

In the Allahabad High Court

Case No : Writ Petition No. 7552 of 2010 (MS)

Kumbhi Chini Mill — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 03-01-2011

Acts Referred:

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

Citation : (2011) 1 ADJ 610

Hon'ble Judges : Narayan Shukla, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Narayan Shukla, J.—Heard Mr. R.N. Trivedi, learned Senior Advocate assisted by Mr. Akhilesh Kalra, learned Counsel for the Petitioner, Mr. Raghvendra Kumar Singh, learned Senior Advocate assisted by Mr. Anurag Kumar Singh, learned Counsel for the opposite parties, Dr. R.K. Srivastava & Mr. A.K. Pandey, learned Counsel s for the opposite party No. 4 as well as Mr. K.S. Pawar, learned Counsel for the opposite party No. 5.

2. The dispute between the sugar mills demanding more and more sugarcane for allotment in their favour is perennial in nature. The allotment of sugarcane and reservation as well as assignment of sugarcane area is regulated under the U.P. Sugar Cane (Regulation of Supply & Purchase) Act, 1953 (hereinafter referred to as the Act) read with U.P. Sugarcane (Regulation of Supply & Purchase) Rules, 1954 (hereinafter referred to as the Rules) as also the Sugarcane (Control) Order, 1966. For the purpose of Reservation and assignment of sugarcane area, the Cane Commissioner is empowered u/s 12 of the Act to publish estimated quantity of requirement of the sugarcane for the particular sugar Factory at the time of initiation of allotment of sugarcane, which can be modified during the crushing season also as per requirement of the sugar factories u/s 12 of the Act as well as Order 6(a) and (b) of the Sugarcane (Control) Order, 1966, thus the basis of reservation and assignment of the sugarcane area, is the estimated

requirement of the sugar factories, as has been held by this Court in the case of Govind Nagar Sugar Limited v. State of U.P. and Ors. 2001 (2) JCLR 354 (All)(LB).

3. The aforesaid exercise of the Cane Commissioner done u/s 12 of the Act is subject to revision of the State Government as is provided under Rule 23-A of the Rules, 1954. In the present case the dispute relates to two sugar purchase centers; one is Marsanda-I, reserved for the opposite party No. 4; second is Marsanda-II, assigned for the Petitioner. The Cane Commissioner derives power of reservation as well as assignment u/s 15 of the Act, 1953, which is extracted below:

15. Declaration of reserved area and assigned area.--(1) 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 Cooperative Society in the manner to be prescribed:

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

(b) assign any area (hereinafter called an assigned area), 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) 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.

(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.

(4) An appeal shall lie to the State Government against the order of the Cane Commissioner passed under Sub-section (1)

4. The aforesaid power of the Cane Commissioner is regulated by Rule 22 of the Rules, 1954, which is also extracted here-in-below:

22. In reserving an area for or assigning an area to a factory or determining the quantity of cane to be purchased from an area by a factory, u/s 15, the Cane Commissioner may take into consideration-

(a) the distance of the area from the factory.

(b) facilities for transport of cane from the area,

(c) the quantity of cane supplied from the area to the factory in previous year,

(d) previous reservation and assignment orders,

(e) the quantity of cane to be crushed in factory,

(f) the arrangements made by the factory in previous years for payment of cess, cane price and commission,

(g) the views of the Cane-growers'' Co-operative Society of the area.

(h) efforts made by the factory in developing the reserved or assigned area.

5. Clause 6(a) and (b) of the Sugarcane (Control) Order, 1966, which is relevant for consideration in the matter of reservation is also reproduced here-in-below:

6. Power to regular 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.

6. Each and every guided factor as is envisaged under Rule 22 of the Rules is equally important in the matter of reservation and assignment of area as well as determination of quantity of cane to be purchased from the area by the sugar factory. However, the Cane Commissioner has to strike the balance between the sugar mills, for which he can give weightage to one factor ever other keeping in view the prevailing circumstances in the interest of the sugar factory as well as sugarcane growers, but it does not mean that he is permitted to overlook the other factor, rather it can be said that he has to look into the matter of one Sugar Mill in comparison to other Sugar Mill considering all the guided factors and apply the same in the prevailing circumstances.

7. The comparative chart of both the contesting sugar mills for the crushing season 2010-11 is indicated below:

Comparative Chart

Govind Sugar Mill

Kumbhi Sugar Mill

S. No.

Cane Crushing capacity (in TCD)

7500

8000

1

Cane requirement u/s 12(2) (2010-11)

122.02

112.02

2

Cane area allotted (2010-11)(in hectares)

33588

22517

3

Cane Production Allotted (in L.Q.)(2010-11)

199.46

134.59

4

Drawl Percentage 2010-11 (calculated as per cane reservation order)

61.18%

83.23%

5

Expected crushing days if 70% drawl is taken into account (as per bonding policy 2010-11)

206.00%

151

6

Available cane in comparison to crushing days

(+) 26 days

(-) 29 days

8. The Cane Commissioner by means of order dated 24th of October, 2010, reserved and assigned the sugarcane area for both the respective mills, keeping in view their performance of the preceding crushing year 2009-10. The Petitioner raised objection in reservation of one sugarcane center called as Marsanda-I belonging to Hargaon Cane Society, reserved in favour of opposite party No. 4, whereas the Respondent No. 4 raised objection against the assignment of another sugarcane purchase center i.e. Marsanda-II of the same very Society in favour of the Petitioner by filing the appeals before the State Government. The State Government by means of order dated 16th December, 2010 decided both the appeals and in addition to the Marsanda-I sugarcane center, reserved the

Marsanda-II also in favour of opposite party No. 4. Being aggrieved with which, the Petitioner has filed the present writ petition.

9. The sugarcane purchase center Marsanda has been bifurcated into two parts only in the current crushing season i.e. 2010-11. Earlier being one in crushing season 2007-08 and 2008-09, it was reserved to Respondent Sugar Mill. For 2009-10 it was reserved to Petitioner sugar mill, but ultimately the Respondent sugar mill succeeded to get it reserved in its favour at the stage of appeal. The order passed by the appellate authority had also been upheld by this Court. Accordingly it has been reserved with the Respondent sugar mill up to the current crushing season. In the current crushing season the total quantity of sugarcane of Marsanda-II i.e. 2.25 lakh qunitals has been assigned to the Petitioner. The Petitioner claims to retain the same on the basis of the several factors pointed out by him including the cane crushing capacity, cane requirement, cane area allotted to it, cane production therein and drawl percentage etc. Upon perusal of the order passed by the Cane Commissioner, I find that all these factors have been considered in making the allotment of sugarcane. It is stated on behalf of the Petitioner that one factor, which is more important in the matter of reservation and assignment i.e. the views of the cane growers society of the area, is in its favour as due to nonpayment of sugarcane price, the sugarcane society resolved to supply the sugarcane only to the Petitioner. Nevertheless, the Cane Commissioner has reserved Marsanda-I in favour of the Respondent sugar mill by bifurcating it in two parts.

10. On the other hand the Respondent sugar mill claims that so far as the payment of dues is concerned, the same has been cleared alongwith interest to the sugarcane growers, may be after the interference of this Court, but nothing is due for payment. It is also stated by the Respondent sugar mill that due to division of mill gate area of Puwayan sugar mill in six sugar factories, the Petitioner sugar mill has been benefitted with further allocation of around 5.50 lack quintals of sugarcane by means of order dated 3rd of December, 2010. This factor has not been considered by the appellate authority, thus in place of 2.25 lack quintals sugarcane available in the sugarcane purchase center Marsanda-II, the Petitioner has been benefitted with just double quantity of sugarcane and now its grievance is over.

11. Both the contesting sugar mills blamed the allotment of sugarcane purchase centers at the distance of 70 km. to each of them to justify the allotment made in favour of respective Sugar Mill. It is disputed by the Respondent that it is not at all reasonable to allot the Petitioner at the distance of 70 km. that too by crossing the sugarcane purchase areas of two sugar mills.

12. Upon perusal of the order passed by the State Government, I find that the appellate authority has observed that, prima facie, the Respondent sugar mill has been allotted more sugarcane in comparison to its drawl percentage, which is 61%, whereas the drawl percentage of Petitioner''s sugar mill is 83%. The performance of the Petitioner''s sugar mill in the preceding crushing season has

also been shown to have been better, but it has been observed that though the Respondent sugar mill was allotted more sugarcane, but the availability of sugarcane was almost equal and both the sugar mills also run almost the same days. In the present crushing season as the comparative chart produced above speaks, it is obvious that the crushing capacity of the Petitioner is more than the crushing capacity of Respondent mill, but keeping in view the cane requirement as estimated by the Cane Commissioner, which is not disputed. I am of the view that this cane area as well as the cane has been allotted to the Petitioner, considering the guiding factors. The Cane Commissioner assigned Marsanda-II in favour of the Petitioner and reserved Marsanda-I in favour of the Respondent sugar mill, which does not require interference, therefore, I am of the view that the State Government has failed to appreciate the guided factors in totality in the matter of allotment of sugarcane, thus the order dated 16th of December, 2010, passed by the State Government is unsustainable and the same is hereby quashed. The reservation/allotment order dated 24th of October, 2010, passed by the Cane Commissioner in favour of the respective mills are hereby maintained.

13. u/s 15 Sub-section (3) of the Act it is provided that 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.

14. In light of the aforesaid provisions it is always open to the Cane Commissioner to increase or decrease the quantity of sugarcane allotted to any factory in exercise of power provided u/s 15(1), therefore, if the Respondent Factory is able to crush the whole quantity of sugarcane available in its area, it can move an application to the Cane Commissioner for further allotment.

15. So far as the subsequent allocation of 5.50 lack qunitals in favour of the Petitioner due to division of mill gate area of Puyawan Chini Mill is concerned, that is also the relevant factor for consideration, keeping in view the other guided factors, therefore, I feel it appropriate to open the Cane Commissioner to consider this aspect after hearing the parties concerned and if he feels necessity in modification of the allotment orders in light of the subsequent change, he is at liberty to do so. Accordingly the order is issued.

16. The writ petition is allowed.

