

(2011) 03 AHC CK 0236

In the Allahabad High Court

Case No : Writ Petition No. 325 (M/S) of 2011 With Writ Petition No. 326 (M/S) of 2011, Writ Petition No. 327 (M/S) of 2011, Writ Petition No. 349 (M/S) of 2011

Laxmi Sugar Mills Co.Ltd.

APPELLANT

Vs

State of Uttarakhand and others

RESPONDENT

Date of Decision : 16-03-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1953 — Section 12, 15, 2(a), 2(n)

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

Citation : (2011) 03 AHC CK 0236

Hon'ble Judges : Tarun Agarwala, J

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.

Every year after the start of the crushing season, there is a spate of litigation inter se between the sugar factories, which are engaged in the business of manufacture of sugar by Vacuum Pan Process. The core issue, which is involved in this bunch of writ petitions, is the allocation of cane areas/sugar centres. Every year there is a general demand from all the sugar factories that the allocation of cane and cane areas by the Cane Commissioner is inadequate and that the sugar factories require more cane for their crushing operations, failing which, the unit becomes unviable.

The U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 (hereinafter referred to as the "Act") regulates the supply and purchase of sugarcane required for the use of sugar factories and Gur, Rab or Khandsari Sugar Manufacturing Units. Section 2(a) of the Act defines "assigned area" as an area assigned to a factory under Section 15 of the Act. Section 2(n) of the Act defines "reserved area" as an area reserved for a sugar factory under an order for reservation of sugarcane areas made under Rule 125B of the Defence of India

Rules, 1962, and when no such order is in force, the area specified in an order made under Section 15 of the Act. Section 12 of the Act provides estimates of requirements for sugarcane. For facility, the said provision is quoted hereunder:

?12. Estimates of requirements.

(1) The Cane Commissioner, may for purposes of Section 15, by order, require the occupier of any factory to furnish in the manner and by the date specified in the order to the Cane Commissioner an estimate of the quantity of cane which will be required by the factory during such crushing seasons or crushing seasons as may be specified in the order.

(2) The Cane Commissioner shall examine every such estimate and shall publish the same with such modifications, if any, as he may make.

(3) An estimate under subsection (2) may be revised by an authority to be prescribed.? Section 15 provides for declaration of reserved area and assigned area. For facility, the said provision is quote hereunder:

?15. Declaration of reserved area and assigned area.(1) Without prejudice to any 3 order made under Clause (d) of subsection (2) of Section 16 the Cane Commissioner may, after consulting the Factory and Canegrowers" 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 make 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 subsection (1).? In exercise of the powers under Section 28 of the Act of 1953, the State Government framed the U.P. Sugarcane (Regulation of Supply and Purchase) Rules, 1954 (hereinafter referred to as the "Rules"). For facility, Rule 22 of the Rules is quoted hereunder:

?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, under Section 15, the Cane Commissioner may take into consideration

(a) the distance of the area from the factory, 4

- (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 Canegrowers" Cooperative Society of the area,
- (h) efforts made by the factory in developing the reserved or assigned area.?

From the aforesaid provisions, it is clear that in order to declare a reserved area or an assigned area for a sugar factory, the Cane Commissioner is required initially to issue an order under Section 12 of the Act estimating the quantity of sugarcane that could be required by a factory during a crushing season or crushing seasons for a sugar factory. Crushing season has been defined under Section 2

(i) of the Act as the period beginning on 1st October of any year and ending on 15th July, the following year. Based on the estimation fixed under Section 12 of the Act, the Cane Commissioner, after consulting the sugar factories and the Canegrowers" Cooperative Society and, after considering the factors contemplated under Rule 22 of the Rules, may reserve an area for a sugar factory and can also pass an order assigning an area to a sugar factory. The underlying idea of reserving an area to a sugar factory is, that it ensures stability to a sugar factory to purchase all the cane in the area so reserved in favour of a sugar factory. When an area is reserved, it becomes obligatory for a sugar factory to lift all the cane from its reserved area so offered by the Canegrowers" Society. Similarly, when an area is assigned by the Cane Commissioner, it becomes obligatory upon such factory, to whom the area is assigned, to lift such quantity of cane grown in that area and offered for sale to the factory as determined by the Cane Commissioner. The difference between a reserved area and an assigned area is, that a reserved area has some kind of a permanency attached to it, and an assigned area is on a temporary basis. The court, in several cases, has interpreted as to when an assignment can be made. The courts have held that where there is a breakdown in the factory during the crushing season and the sugar factory is unable to lift the cane, the Cane Commissioner, in such an eventuality, can issue an assignment order, assigning a certain area to another sugar factory to lift a particular quantity of cane, so that, cane is not lost; the canegrowers do not suffer; and production of sugar, which is of national interest, does not suffer. There could be another reason for assignment, namely, that a sugar factory is unable to pay cane dues. In that scenario, the Cane Commissioner could pass an order of assignment assigning the cane reserved for a factory to another factory for a particular period and for a limited quantity. Other reason could be that in a particular year, there is surplus cane in a

reserved area of a 6 sugar factory and such surplus cane which is in excess of its crushing capacity could be assigned to another factory in whose reserved area there is less cane. These are some of the reasons when assignment could be made. There could be other reasons as well which the Court is not dwelling upon, but the reason for expressing these differences in a reserved area and in an assigned area is, the fact that an order for reserved area is passed on different considerations and an order for assignment is passed on different considerations. Taking the aforesaid in mind, the Court has to consider the reservation order that has been passed by the Cane Commissioner in the crushing season 201011. Prior to the issuance of the reservation order under Section 15 of the Act, an exercise under Section 12 of the Act is required to be taken by the Cane Commissioner to estimate the cane requirements of each sugar factory. In the present case, the dispute is between three sugar factories, namely, Laxmi Sugar Mills Co. Ltd., Uttam Sugar Mills Ltd. and RBNS Sugar Mills. The Cane Commissioner estimated the requirement of cane for Uttam Sugar Mills at 80 lac quintals, for Laxmi Sugar Mills it was 64 lac quintals and for RBNS Sugar Mills it was 112 lac quintals. This estimation of cane is basically based on the crushing capacity of the factory. The crushing capacity of Uttam Sugar Mills is 2500 TCD, for Laxmi Sugar Mills it is 4000 TCD and for RBNS Sugar Mills, the crushing capacity is 7000 TCD. The Cane Commissioner for reasons best known considered the crushing capacity of Uttam Sugar Mills at 5000 TCD, which will be discussed at a later stage. Based on the estimation fixed by the Cane Commissioner, a reservationcumassignment order dated 4th November, 2010 was passed under Section 15 of the Act of 1953. By this order, various areas/cane centers were reserved in favour of the sugar factories and by the same order, the Cane Commissioner simultaneously assigned some reserved areas in favour of another sugar factory.

By the reservation order, allotment of sugar cane through a reserved or an assigned area to Uttam Sugar Mills was 85.11 lac quintals against the estimated requirement fixed at 80 lac quintals; for Laxmi Sugar Mills, against the estimation of 64 lac quintals, the reservation order allotted 91.64 lac quintals and for RBNS Sugar Mills, against the estimation of 112 lac quintals, allotted 148.52 lacs quintals.

It transpires that the Cane Commissioner issued another reservation order dated 31st December, 2010, whereby one centre was allotted to Uttam Sugar Mills and half of another centre was assigned to Laxmi Sugar Mills.

Against the aforesaid two reservation orders dated 4th November, 2010 and 31st December, 2010, RBNS Sugar Mills filed two appeals under Section 15(4) of the Act before the appellate authority contending that 16 reserved centres have been assigned to other sugar mills, namely, 9 reserved centres to Uttam Sugar Mills, 7 centres to Laxmi Sugar Mills and 3 centres to Doiwala Sugar Mills (which sugar factory is not before this Court). Uttam Sugar Mills also preferred an appeal against the reservation order dated 4th November, 2010, alleging that 3 reserved centres have been assigned to Laxmi Sugar Mills and praying that in view of the

shortage of allocation of sugar cane, 7 centres of Laxmi Sugar Mills and 5 centres of RBNS Sugar Mills should be assigned.

The appellate authority, after considering the objections of all the sugar factories and after hearing the matter and after considering the factors enumerated under Rule 22 of the Rules, passed an appellate order dated 15.2.2011 disposing of the appeals by modifying the reservation order. By the appellate order, 3 reserved centres of RBNS Sugar Mills were given back to RBNS Sugar Mills and at the same time, certain other centres were assigned. 8 centres of Uttam Sugar Mills were taken away, 4 centres were reserved again in favour of Laxmi Sugar Mills and 4 were reserved in favour of RBNS Sugar Mills, but 9 centres of Laxmi Sugar Mills and RBNS Sugar Mills were given to Uttam Sugar Mills by way of assignment. The appellate authority, as a result of this jugglery, has held, while enumerating it in the chart, that equitable distribution of sugarcane has been made inter se between all the sugar factories.

The appellate authority while passing the impugned order considered two factors, namely, that as far as possible a reserved centre, which has been reserved in favour of a sugar factory, should not be disturbed and that simultaneous assignment should not be made by the Cane Commissioner. The second factor taken is, that the centres so reserved or assigned should be made in such a fashion that it should be compact and contiguous to a particular sugar factory. The appellate authority considered the objection of Laxmi Sugar Mills with regard to the crushing capacity of each sugar factory but did not base its order on that ground.

Against the order of the appellate authority, Laxmi Sugar Mills has filed three writ petitions for the quashing of the appellate order and praying that 10 centres, which have been taken away by the appellate order, should be given back to it. Uttam Sugar Mills has also filed the writ petition praying that 8 centres, which have been taken away by the appellate order, should be given back to it. All the four writ petitions have been clubbed and have been heard together.

Heard Sri U.K. Uniyal, the learned senior counsel assisted by Sri V.B.S. Negi and Sri Navneet Kaushik, the learned counsel for the petitioner Laxmi Sugar Mills, Sri Sharad Sharma, the learned senior counsel assisted by Sri Vikas Pande, the learned counsel for the petitioner Uttam Sugar Mills, Dr. R.K. Srivastava, the learned counsel along with Sri Paresh Tripathi and Sri C.K. Sharma, the learned counsel for the respondent no. 4 RBNS Sugar Mills, Sri Gopal Narain, the learned counsel for the respondent no. 5 Cane Cooperative Development Society and Sri Sudhir Kumar and Sri R.C. Arya, the learned Brief Holders for the State. The Brief Holder has placed a map before the Court, which the Court has perused. The Brief Holder has marked out the relevant cane centres which have been reserved or assigned to a particular factory pursuant to the order of the appellate authority. A perusal of this map indicates that the appellate authority considered Rule 22(a) and (b) and rightly allocated the cane areas on the ground of compactness and contiguousness of an area vis-à-vis the location of the factory

concerned. The appellate court was further of the view that there should not be a simultaneous reservation order and an assignment order and that as far as possible a reserved area should not be disturbed and in exceptional circumstances, the Cane Commissioner should pass an assignment order. In this regard, in *Simbhaoli Sugar Mills Ltd. vs. Appellate Authority and others*, 2000 (3) AWC 1867, a Division Bench of the Allahabad High Court held that the Cane Commissioner has no power or authority to reserve a particular area/centre for the purchase of sugarcane in favour of one sugar factory and simultaneously assigning the same in favour of the other. The Division Bench held as under:

?Reservation of a centre in favour of a factory and simultaneously assigning it to another renders the reservation to be nugatory, meaningless, redundant and otiose. It would tantamount to giving by one hand and taking away by the others. No doubt, the assignment in favour of another factory can be only when there exists a reservation order in favour of some factory, but it must be justified by some subsequent eventuality. For example, there may be breakdown in the factory for which a particular purchase centre is reserved; it may become inoperational for a certain period during a crushing season for myriad seasons; or it might not be making sufficient draws from the area reserved for it.?

?The mere fact that there was shortage of sugarcane for Agauta Sugar and Chemicals 11 also could not clothe the Cane Commissioner with the power to simultaneously assigning some of the reserved centres of Simbhaoli Sugar Mills in favour of Agauta Sugar and Chemicals.?

The Division Bench at another place held: ?Actualities and developments could surface with the progress of crushing season which could have bearing on estimates on the basis whereof the reservation order had been passed in favour of Simbhaoli Sugar Mills. The assignment of certain centres reserved for Simbhaoli Sugar Mills during the currency of the crushing season could be warranted upon the exigencies of the situation and the changing factors coming to light with the progress of the crushing season, but simultaneous assignment of the reserved centres in favour of another factory could not be possible.? The Division Bench at another place further held:

?Truly speaking the assignment is a temporary phenomenon arising out of exigencies and developments coming to light during the progress of currency of crushing season. On giving our thoughtful consideration to the various provisions of the Act, Rules and Order of 1994, we have no manner of doubt that simultaneous assignment in favour of a factory in respect of an area reserved for the other is not at all contemplated.?

In *M/s. Basti Sugar Mills Co. Ltd. vs. State of Uttar Pradesh and others*, AIR 1995 Allahabad 309, a Division Bench again held:

?9. On consideration of the entire facts and circumstances enumerated above, it appears amazing as to how a reserved area namely the Reserved Tinich Rail Centre to the petitioner could be maintained as Reserved for the petitioner and

simultaneously assigned as well to respondent No. 5. The same area could not be reserved for the petitioner and assigned as well to respondent No.5.?

In an unreported judgment passed in Writ Petition No. 3440 (M/B) of 1995, M/s L.H. Sugar Factories Ltd. vs. State of Uttar Pradesh, decided by the Lucknow Bench of the Allahabad High Court on 23rd November, 1995, the Division Bench held:

?The scheme of subsections of Section 15 of the Act indicates that firstly an area can be reserved for a Sugar Factory and it is followed by a provision about assignment of area under subsection (3) but assignment is limited to the extent of the quantity of sugar cane as may be determined by the Cane Commissioner. Overlapping of reserved area and assigned area without specification of quantity of sugar cane is not envisaged. All that is permissible is that out of the area reserved for a Sugar Mill, some of it may be assigned only for the purpose of purchase of certain given quantity of cane from the assigned area. The learned counsel for the petitioner has also placed reliance upon a Division Bench decision of this Court in the case of M/s Basti Sugar Mills Co. Ltd. V. State of U.P. & others A.I.R. 1995 All. 309, in support of the view taken above.

We feel that a general and open order assigning the same area which is reserved for another factory, is not in accordance with law. It is also not understandable as to why it was necessary to assign the area simultaneously while reserving the same area by the same order by appending the notes.?

In the light of the aforesaid judgments, it is clear that the scheme of Section 15 of the Act of 1953 indicates that firstly an area is required to be reserved for a particular sugar factory followed by a provision of assignment of an area under subsection (3) and that assignment is limited to the extent of the quantity of sugarcane as determined by the Cane Commissioner. The Act, especially, Section 15 does not contemplate reservation of a cane area or of a centre in favour of a particular sugar factory and simultaneously assigning it by the same order to another sugar factory. In the light of the aforesaid, the appellate authority was justified in rectifying the mistake committed by the Cane Commissioner in reserving an area and simultaneously assigning it. However, the appellate authority did not set aside all the reservation orders that were assigned to other factories by the order of the Cane Commissioner for the simple reason that the appellate authority also considered the availability of cane and the quantity of cane required to be crushed in a factory and after doing a balancing act, had passed the appellate order. Sri U.K. Uniyal, the learned senior counsel laid stress on the illegality of the order of the appellate authority by contending that the centres so reserved or assigned in favour of a sugar factory by the appellate order was wholly illegal since the appellate authority did not consider the crushing capacity of that particular sugar factory. The learned counsel submitted that in the case of Uttam Sugar Mills, the crushing capacity has been fixed at 5000 TCD relying upon an interim order of the High Court dated 28th September, 2006, passed in Writ Petition No. 518 (M/B) of 2006. The learned counsel

submitted that the appellate authority had misread the interim order of the High Court which nowhere fixed the capacity of Uttam Sugar Mills at 5000 TCD and when the crushing capacity of Uttam Sugar Mills is 2500 TCD, the allocation of sugarcane to Uttam Sugar Mills by reallocating some centres again to Uttam Sugar Mills becomes unwarranted. The learned counsel further submitted that similarly, in the case of RBNS Sugar Mills, the said factory considered the requirement of sugarcane at 160 lac quintals on the basis of its crushing capacity at 7000 TCD. Consequently, if the appellate authority had judged the requirement of RBNS Sugar Mills taking the capacity at 7000 TCD, the requirement of cane would be less than 125 lac quintals which the Cane Commissioner had allocated and consequently, giving back the centres from the petitioner was unwarranted.

The learned counsel for the Uttam Sugar Mills also made similar submissions that the allocation made by the Cane Commissioner was less and the petitioner required more cane centres which the appellate authority did not consider vis-à-vis its crushing capacity and consequently, the order of the appellate authority was liable to be set aside. The submissions of the learned counsels for Laxmi Sugar Mills and Uttam Sugar Mills is not correct. In the first instance, the crushing capacity of a sugar factory cannot be made the sole criteria of judging the requirement of sugarcane for a particular factory. In fact, the crushing capacity is not a factor to be considered under Rule 22 of the Rules. The crushing capacity is a requirement for estimation of sugarcane for a sugar factory under Section 12 of the Act. While exercising the power under Section 12 of the Act, the Cane Commissioner has issued an order under Section 12 of the Act estimating the requirement of Uttam Sugar Mills at 80 lac quintals and for Laxmi Sugar Mills at 64 lac quintals. This estimation of sugarcane fixed by the Cane Commissioner has been accepted by Uttam Sugar Mills as well as by Laxmi Sugar Mills and they have not challenged this order by invoking Section 12 (3) of the Act before the revisional authority. Based on this estimation of 80 lac quintals for Uttam Sugar Mills, the Cane Commissioner allotted 85.11 lac quintals which is much more than the estimated requirement fixed under Section 12 of the Act, meaning thereby that sufficient quantity of sugarcane was made available as per the crushing capacity and there was no shortfall of sugarcane. Similarly, for Laxmi Sugar Mills, against the estimated requirement of 64 lac quintals fixed by the Cane Commissioner under Section 12 of the Act, the reservation order allocates 91.64 lac quintals that is again much more than the crushing capacity. Consequently, the petitioner could not question the demand for more allocation of sugarcane than allotted by the Cane Commissioner.

It may, however, be stated here that the appellate authority as well as the Cane Commissioner committed an error in fixing the crushing capacity of Uttam Sugar Mills at 5000 TCD basing it on the interim order of the High Court dated 28th September, 2006 passed in Writ Petition No. 518 (M/B) of 2006. The Court had called for the record of Writ Petition No. 518 (M/B) of 2006 and perused its contents and finds that Uttam Sugar Mills had applied for the expansion of its

crushing 16 capacity which was rejected by the State Government on 27th January, 2006. The Court by an interim order dated 28th September, 2006, had only directed the State Government to reconsider the matter afresh pending final disposal of the writ petition. The writ court did not fix the crushing capacity of Uttam Sugar Mills. Consequently, the observation made by the appellate authority is unwarranted and incorrect and to that extent, the said order cannot be sustained. However, the operative portion of the order is not being disturbed since the Court does not find any manifest error in it. In any case, the Court finds that Writ Petition No. 518/2006 (M/B) has been dismissed by an order dated 10.3.2011.

A writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals or authorities in excess of their jurisdiction or as a result of refusal to exercise jurisdiction vested in them or it acts illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice. A writ of certiorari can only be issued in exercise of extraordinary jurisdiction which is different from an appellate jurisdiction. A finding of fact recorded by an authority can only be corrected in a writ of certiorari if such finding is based on no evidence or is not supported by any evidence. However, a pure error, however grave it may, cannot be corrected in a writ. The supervisory jurisdiction of the High Court is not available to correct errors of fact unless the error is manifest and apparent on the face of record. The writ court is not reappreciating or evaluating the evidence or drawing an inference to correct errors which are of a technical character. This view of mine is fortified by a decision of the Supreme Court in *B.K. Muniraju vs. State of Karnataka and others*, (2008) 4 SCC 451. In *M/s Siel Ltd. vs. State of U.P. & others*, [1997 (2) JCLR 100 (All)], a Division Bench of the Allahabad High Court held as under:

?16. In my opinion an order under Section 15 is an order which should not be rightly interfered with by this Court unless it is clear that some serious illegality has been committed. Basically it should be left to the authorities under the Act to pass the reservation/assignment order, broadly taking into consideration the factors mentioned in Rule 22.?

In the light of the aforesaid, the Court finds that the appellate court has balanced the availability of cane considering the factors enumerated in Rule 22 of the Rules which factors were rightly considered. The Court does not find any serious illegality which has been committed by the lower appellate court and consequently, since the Court does not find any palpable error of law, the Court does not find any force in the writ petitions. The writ petitions are dismissed.

The Registry is directed to send a certified copy of the order to the Cane Commissioner within two weeks, who is directed to ensure that reservation and assignment orders are not passed simultaneously in future while passing an order under Section 15 of the Act.