
(2007) 01 AHC CK 0115
In the Allahabad High Court
Case No : Writ Petition No.8172 (M/B) of 2006

Laxmi Sugar & Oil Mills and Another	APPELLANT
Vs	
District Magistrate, Hardoi and Others	RESPONDENT

Date of Decision : 24-01-2007

Acts Referred:

Uttar Pradesh Sugar undertakings (Acquisition) Act, 1971 — Section 2(h)

Citation : (2007) 01 AHC CK 0115

Hon'ble Judges : Jagdish Bhalla, J and Dharam Veer Sharma, J

Final Decision : Disposed Of

Judgement

1. We have heard learned Counsel for the petitioner and learned Additional Chief Standing Counsel.
2. Petitioner is a company and was engaged in manufacturing of sugar in the name and style of Laxmi Sugar & Oil Mill Ltd. Hardoi. After sometime in December, 1979 certain sugarcane transporters threatened to go on strike because dues were not cleared by the petitioner's Sugar Mill. As the strike would have created problems for the district administration, the District Administration intervened in the matter. According to the petitioner, it was resolved in the meeting of management of the Sugar Mill with the district administration that the petitioner shall deposit certain amount in the shape of FDR and the said amount would be paid to transporters, if petitioner fails to clear the dues of the Cane Transporters.
3. It is in these circumstances that the petitioner Company deposited the amount [Rs. 10 lacs] in the Allahabad Bank. Later on, the said money was transferred by the district administration from Allahabad Bank and deposited in Account No. 3375 of Hardoi District Cooperative Bank. It is said that on 1.4.1981, the amount was withdrawn from the said Cooperative Bank and was deposited in main branch of the Post Office, Hardoi in Saving Account No. 255448 [Annexure4] in the name of Petitioner's Company by the District Magistrate, Hardoi.

4. Learned Counsel for the petitioner has informed that all the dues of the transporters were cleared by the PetitionerCompany, without disturbing the money deposited with the district administration, and the transporters neither from the petitioner nor from the district administration demanded for clearance of any dues. Therefore, it was incumbent upon the district administration to return the amount, so deposited by the petitionerCompany.

5. Learned Counsel for the petitioner has submitted that sometime in 1984 the State Government acquired the Sugar Mill under the provisions of U.P. Sugar Undertaking Acquisition Act, 1971. The contention of the learned Counsel for the petitioner is that the Sugar factory of the Petitioner's company has been acquired but the Company, which has its independent identity, still exists.

6. A counter affidavit has been filed on behalf of the District Magistrate where in paragraphs 10 and 13 the respondents have admitted about the amount so deposited by the petitioner. However, they have further stated in the counter affidavit that the said amount could not be paid to the petitioner, on account of the fact that Laxmi Sugar & Oil Mill has been acquired by the Government, as such the petitioner does not have any right or authority for claiming the amounts deposited in the name of the Company. Further, there is no question of making the payments in the name of the petitioner.

7. Later on, a Supplementary affidavit has been filed to bring on record an order passed by the District Magistrate, Hardoi, on 18th January, 2007 wherein the same reasons, which were indicated in the counter affidavit have been given i.e. money cannot be released in favour of the petitioner as after acquisition, all the properties have vested in Sugar Corporation.

8. Placing reliance on Section 2(h) of the U.P. Sugar Undertaking (Acquisition) Act, 1971, learned Counsel for the petitioner contended that the agricultural land cash etcetra as defined in the said provision, does not come within the purview of "schedule undertaking"

9. Learned Counsel for the petitioner has also referred the Statement of Objects and Reasons of the U.P. Sugar Undertakings [Acquisition] Act, 1971 which provides that "the owners of certain sugar mills of the State or their lessees had created serious problems for the canegrowers and labour, which created an adverse impact on the general economy of the areas, where those mills were situate. The only solution of these problems was for the State Government to take immediate steps to acquire with a view to renovating those and rehabilitating mills or carry out improvement therein". It does not say anything about the cash in hand or cash at bank including debts. It has vehemently been argued on behalf of the petitioners that under the Act it is the factory alongwith its properties which were connected with or were in use for the purposes of the factory which were acquired and the properties, assets and cash as defined under subclause 2(h) (vi) and (xiii) cannot be taken over or vest in the Corporation.

10. To understand the acquisition under U.P. Sugar Undertakings (Acquisition) Act, 1971, it would be apt to refer certain provisions of the said Act. Section 3 deals with the vesting of scheduled undertakings from the appointed day in the Corporation. Section 4 provides for consequences of vesting. Section 5 makes it obligatory on every person in whose possession or custody or under whose control any property or asset, book of account, register or other document comprised in that undertaking may be, to forthwith deliver the same to the Collector. Section 7 provides for determination and mode of payment of compensation for acquisition of scheduled undertakings. Section 8 provides for claims to be satisfied out of compensation payable to the owners of the undertaking. Section 9 provides for avoidance of certain secured debts consequent upon acquisition.

11. For the purpose of resolving the controversy as indicated, a reference to the definition of the words? scheduled undertaking? as defined in the Act may be made. They are defined in clause (h) of Section 2 of the Act, and the same reads:

(h) ?scheduled undertaking? means an undertaking engaged in the manufacture or production of sugar by means of vacuum pans and with the aid of mechanical power in factory specified [in any of the schedules to this Act], and comprises:

(i) all plant, machinery and other equipment (including milling plant, boiling house equipment, other sugar machinery, cane unloading equipment and power plant), weighbridges, cranes, chimneys, turbines and boilers (including the foundations, superstructure and roofing thereof) pertaining to that factory;

(ii) any engineering workshop, including machinery and equipment thereof;

(iii) any chemical laboratory including any apparatus and equipment thereof;

(iv) any motor or other vehicle or locomotive, or railway sidings pertaining to that factory;

(v) any dispensary or hospital or community or welfare centre exclusively for the benefit of workmen and other persons employed in that factory;

(vi) all lands (other than lands held or occupied for purposes of cultivation and grove lands) and buildings held or occupied for purposes of that factory [including buildings pertaining to any of the properties and assets hereinbefore specified, and guest houses and residences of directors, managerial personnel, staff and workmen or of any other person as lessee or licensee, any any store houses, molasses, tanks roads, bridges, drains, culverts, tubewells, water storage or distribution system and other Civil engineering works] including any leasehold interest therein: [emphasis supplied]

(vii) all limestone quarries pertaining to that factory, including any mining lease relating thereto;

(viii) all electrical installations (including any plant or equipment for the generation or transmission of energy), telephone equipment, furniture and

fixtures pertaining to that factory or to any property or asset hereinbefore specified;

(ix) all tools, spare parts and stores pertaining to that factory;

(x) all firearms for the use of watch and ward staff employed in that factory;

(xi) all maps, plans, sections, drawings and designs pertaining to that factory;

(xii) all sugarcane, sugar in the process of manufacture or production and stocks of sugar and molasses and all begasse and pressmud;

(xiii) all books of account, registers and other documents pertaining to the factory or to any property or asset hereinbefore specified, but does not include cash inhand, cash at bank, advances towards any income or other tax, investments and books, debts or rights, liabilities and obligations respecting any other contract;[emphasis supplied]

A perusal of the above provision shows that generally all machines, tools, plants and other equipment which were being used for manufacturing sugar were acquired including the workshops, chemical laboratories, vehicles, dispensaries, hospitals, community or welfare centers exclusively used for the benefit of the workmen and other persons employed in the factory, Limestone quarries, electrical installations, tools, spare parts and stores pertaining to the factory were also acquired. However, sub clause (vi) and (xiii) referred to above, clearly indicate that 'schedule undertaking' would not include the agriculture lands i.e. land held or occupied for purposes of cultivation and grovelands and also cash inhand, cash at bank, advances towards any income or other tax. It would be apt to mention that the Act specifically differentiates between a company owning a sugar undertaking and the sugar undertaking itself. The company is a much wider entity as against the undertaking, which is only one of the assets of the company. The legislature deliberately did not touch the company and acquired only the undertaking as per the objects of the legislature.

12. Thus, we are unable to understand when there is clear provision in the Act, regarding cash in hand and cash at bank, the District Magistrate in his order dated 18th January, 2007 has held that the money in the post office, which was deposited by the petitioner's company through the District Magistrate as referred hereinabove, cannot be given back to the Sugar Mill in light of the Acquisition Act. In our view, while taking the decision about the amount so deposited with the Post Office, the District Magistrate has completely ignored the provisions of Act and incorrectly held that this money cannot be paid to the petitioner. The language of the Act is very clear and lays down in unequivocal words that the agricultural lands and the cash either in hand or in bank do not vest after acquisition under the provisions of U.P. Sugar Undertakings (Acquisition) Act, 1971. We are of the considered opinion that the action of the District Magistrate in not returning the money right from 1984 when sugar mill was acquired, is arbitrary and the stand taken for not returning the amount is not in consonance

with the provisions of the U.P. Sugar Undertakings (Acquisition) Act, 1971.

13. Learned Standing Counsel could not substantiate under which authority, the District Magistrate is keeping the money with him in the Bank and why no decision was taken on the issue in question until filing of this petition. Further, when the final decision dated 18.1.2007 was taken; it was passed in complete disregard of the provisions of the Act and without applying his independent mind to the facts and circumstances of the case.

14. Considering the material on record and the relevant provisions, the District Magistrate is directed to release the amount by informing the Post Master of Head Post Office concerned to release the principal amount of Account No. 255448 including the entire interest accrued thereon, which shall be paid to the authorized signatory of the M/s Lakshmi Sugar & Oil Mills Ltd. or shall be transferred to Account No. CA550, Lakshmi Sugar & Oil Mills Ltd. existing in Hardoi Urban Cooperative Limited, Hardoi. The Post Master, Head Post Office opposite party no.2 shall also ensure compliance of this order. The entire exercise regarding transfer/return of money shall be completed within 15 days from the date certified copy of this order is produced upon the authorities concerned.

15. The writ petition stands disposed of in above terms.

(Ordered accordingly)