

(2004) 03 AHC CK 0194
In the Allahabad High Court
Case No : C.M.W.P. No. 9112 of 2004

Madhu Sudan and Others

APPELLANT

Vs

Cane Commissioner and Others

RESPONDENT

Date of Decision : 12-03-2004

Acts Referred:

Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1953 — Section 17, 17(1), 9

Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Rules, 1954 — Rule 45, 60

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Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Rules, 1954 — Rule 45, 60

Citation : AIR 2004 All 304

Hon'ble Judges : Tarun Chatterjee, C.J; Dilip Gupta, J

Bench : Division Bench

Advocate : R.K. Chaurasiya, for the Appellant; Ravindra Singh, S.C., for the Respondent

Final Decision : Disposed Of

Judgement

Dilip Gupta, J.—This writ petition has been filed by certain sugar cane growers who are members of the District Cane Co-operative Society Ltd., Basti for a direction to make the payments of the Sugar Cane price along with interest @ 12% per annum.

2. We have heard learned counsel for the petitioner and the learned Standing Counsel appearing for respondent Nos. 1 and 3 and Sri Ravindra Singh learned Counsel appearing for respondent No. 2 namely the District Cane Co-operative Society Ltd., Basti.

3. In order to appreciate the controversy Involved in the petition it may be necessary to refer to some of the provisions contained in the U.P. Sugar Cane (Regulation of supply and Purchase) Act, 1953 (hereinafter referred to as the Act) and the rules framed there under which are known as the U.P. Sugar Cane (Regulation of Supply and Purchase) Rules. 1954 (hereinafter referred to as the Rules).

4. Section 2(f) of the Act defines Cane growers Co-operative Society to mean a Society registered under the Co-operative Societies Act, 1912, one of the objects of which is to sell cane-grown by its members and includes the federation of such societies registered u/s 8 of the said Act. The Co-operative Societies Act. 1912 was repealed by the U.P. Co-operative Societies Act, 1965 and Section 134(2) of the said Act provides that all reference, to Cooperative Societies Act, 1912 occurring in any enactment made by any authority in India and for the time being in force in the State of Uttar Pradesh shall, in its application to the said State, be construed as reference to the relevant provision of this Act. This being the position, the Cane Growers Co-operative Society is a society registered under the provisions of the U.P. Co-operative Societies Act. 1965.

5. Section 13 of the Act deals with the register of Cane Growers and Cane-growers Co-operative Society. Whereas Sections 15 of the Act relates to declaration of reserved area and assigned area, Section 16 of the Act deals with the regulations of purchase and supply of cane in the reserved and assigned area. It stipulates that the State Government may for maintaining supplies, by order Regulate (a) the distribution, sale of purchase of any cane in any reserved area or assigned area; and (b) purchase of cane in any area other than a reserved or assigned area. Sub-section (2) of Section 16 further provides that such an order, amongst others, may also provide for the quantity of cane to be supplied by each Cane Grower or Cane Growers" Co-operative Society in such area to the factory for which the area has been so reserved or assigned.

6. Section 17 of the Act deals with payment of cane price. The relevant clauses of Section 17 of the Act are reproduced below :

"(1) The occupier of a factory shall make such provision for speedy payment of the price of cane purchased by him as may be prescribed.

(2) Upon the delivery of cane the occupier of a factory shall be liable to pay immediately the price of the cane so supplied, together with all other sums connected therewith;

(3) Where the person liable under Sub-section (2) is in default in making the payment of the price for a period exceeding fifteen days from the date of delivering, he shall also pay interest at a rate of 7 1/2 per cent per annum from the said date of delivering, but the Cane Commissioner may, in any case, direct, with the approval of the State Government, that no interest shall be paid or be paid at such reduced rate as he may fix.

Provided that in relation to default in payment of price of cane purchased after the commencement of this proviso for the figure "7-1/2" the "figure 12" shall be deemed substituted.

7. Chapter IX of the Rules deals with "payments". Rule 45 of the Rules is quoted below :

"45. Payments for cane shall be made only to the cane-grower or his representative duly authorised by him in writing to receive payment or to a Cane-growers" Co-operative Society :

Provided that the payment to the members of Cane-growers" Co-operative Society may be made by the factory with the mutual agreement between the factory and the society. This remuneration to the factory for the payment to the members of a Cane Growers" Co-operative Society shall be determined by the Cane Commissioner :

Provided further that all arrears of cane price shall be remitted to the Cane Growers" Co-operative Society concerned within fifteen days of the close of the factory."

8. Chapter XI of the Rules deals with "Cane Growers" Co-operative Society". Rules 57, 58, 59 and 63 are quoted below :

"57. All arrangements in connection with the sowing, sale and supply of cane by Cane Growers" Co-operative Societies shall be in accordance with such general or special instructions as may be issued by the Cane Commissioner from time to time.

58. Every Cane Growers" Co-operative Society shall prepare a budget annually and submit it for sanction to the Cane Commissioner not later than thirty days before the commencement of the budget year.

59. (1) Expenditure shall (not) be incurred unless it has been provided for in the budget as sanctioned.

(2) In an emergency or to meet an unforeseen contingency the Cane Commissioner may order expenditure on any specified item from the funds of a Cane Growers" Co-operative Society, provided that such expenditure is in the furtherance of the objects of the society.

60. If the Cane Commissioner finds that the management of a society or any member thereof is misusing the resources of the society or is utilising its funds against the provisions of the Co-operative Societies Act and Rules or the bye-laws of the society or any standing or specific instructions of the Cane Commissioner, he may prohibit the society or the member concerned from incurring the expenditure or the liability, and the management of the society or the member concerned, as the case may be, shall be bound to carry out such instructions.

63. An appeal against an order of the Cane Commissioner under the provisions of this Chapter shall lie to the State Government within one month of the date of the communication of the order to the society or the persons concerned."

9. Chapter XIX of the Rules deals with "Arbitration". Rule 108 is quoted below :

"108. Any dispute touching the business of (a) a Cane Growers" Co-operative Society between members, or between members and society, between two registered societies, or between a society and a factory, or between a cane-grower and a factory, (b) a council and a Cane Growers" Co-operative Society, or between a council and a factory or between a council and a cane-grower, regarding the payment of contribution to a council by a society or a factory and any other dispute relating to the business of a council, shall be referred to the Cane Commissioner for decision. The Cane Commissioner shall decide it himself or refer it to arbitration. No suit shall He in a Civil or Revenue Court in respect of any such dispute."

10. Having referred to the relevant provisions of the Act and the Rules we now propose to deal with the controversy involved in the petition. From a perusal of the pleadings in the writ petition it transpires that the petitioners are members of the District Cane Co-operative Society Ltd., Basti (hereinafter referred to as the Society) which is a society registered under the provisions of the U.P. Co-operative Societies Act, 1965. The Society had supplied sugar cane to the Basti Sugar Mills Company Ltd., Basti in the months of February and March, 1999. The General Manager of the said Mill informed the petitioners that the payment of the Sugar Cane supplied by the Society had been made in the year 1999 itself. The grievance of the petitioners is that the Society has not paid them the amount for the sugarcane supplied. They have made several representations to the Secretary of the Society but in vain. They have also made representations to the Cane Commissioner, U.P., Lucknow and copies of the representations dated 22-12-2002 and 15-6-2003 have been annexed as Annexures 2 and 3 to the petition. In spite of these representations the Cane Commissioner has not passed any order.

11. The facts narrated above indicate a very sorry state of affairs of the Society. The Cane Growers had become members of the Society so that their rights could be protected but we find that it is the Society itself, which is responsible for their plight. The question before us is as to what remedy is available to the members of the Society for non-payment of the money due to them for the supply of the Sugarcane.

12. Section 17(1) of the Act provides that the occupier of a factory shall make such provision for speedy payment of the price of Cane purchased by him and Section 17(2) of the Act provides that upon the delivery of Cane the occupier of a factory shall be liable to pay immediately the price of the Cane so supplied. Sub-section (3) of Section 17 provides that in case of default in making the payment of the price for a period exceeding 15 days of the Cane purchased after the

insertion of the proviso by U.P. Act No. 28 of 1974, interest @ 12% p.a. shall be paid from the date of delivery but the Cane Commissioner may with the approval of the State Government direct that no interest shall be paid or be paid at such reduced rate as he may fix. This section deals with the payment of cane price by the occupier of the factory. In the instant case admittedly the occupier of the factory has made the payment of the Sugarcane purchased by it to the Society. Thus, section 17 of the Act cannot come to the aid of the petitioners.

13. Now coming to the Rules we find that under Rule 45 the payments for the Cane shall be made only to the cane grower or his representative or to a Cane Growers" Co-operative Society. In the instant case the cane was supplied by the Society and it has received the payment from the occupier of the factory. Rules 57 to 63 quoted above deal with the Cane Growers" Co-operative Society. A perusal of these Rules indicates that the Cane Commissioner undoubtedly exercises, tremendous control over the affairs of the Society. All the arrangements in connection with the sowing, sale and supply of the cane by the Society has to be in accordance with such general or special instructions as may be issued by the Cane Commissioner. The Annual Budget prepared by the Society is submitted to the Cane Commissioner for sanction and no expenditure can be incurred unless it has been provided for in the sanctioned budget. Rule 60 provides that if the Cane Commissioner finds that the management of the Society or any member thereof misuses the resources of the Society or utilises the funds against the provision of the U.P. Co-operative Societies Act, 1965 or the Rules framed thereunder or any standing or specific instructions of the Cane Commissioner, he may prohibit the Society or the member concerned from incurring the expenditure or the liability and the management of the Society or the member concerned shall be bound to carry out such instruction. Rule 108 provides that any dispute touching the business of a Cane Growers Cooperative Society between members and the Society shall be referred to the Cane Commissioner for decision and the Cane Commissioner shall decide it himself or refer it to arbitration and no suit shall lie in a Civil or Revenue Court in respect of any such dispute. In case the dispute is referred to arbitration then a detailed procedure is provided in Rules 110 to 119. Thus a conjoint reading of the aforesaid Rules makes it more than apparent that the Cane Commissioner exercises great control over the affairs of the Society.

14. From the records we find that the petitioners have already represented to the Cane Commissioner for payment of the dues. The Cane Commissioner is under an obligation to decide the matter either himself or refer it to arbitration. The matter is pending before him since 2002. We therefore consider it appropriate to issue a direction to the Cane Commissioner, U.P., Lucknow to pass an appropriate reasoned order on the application filed by the petitioners within a period of 2 months from the date a certified copy of the order is produced before him after giving an opportunity of hearing to the petitioners and the District Cane Co-operative Society. The question of interest on the delayed payment shall also be considered by the Cane Commissioner in his order.

15. Before parting with this case we would like to point out that the Sugarcane Growers when they become member of the Co-operative Society should not be made to suffer for no fault of theirs. The Society is formed for their benefit and not otherwise. The Society therefore must take all steps for the benefit of its members. In case the management of the Society makes default or is negligent in the performance of the duties imposed upon it then action can also be taken against it in accordance with the provisions of Section 35 of the U.P. Co-operative Societies Act, 1965.

16. With the aforesaid directions, the petition is disposed of. There shall be no order as to costs.