
(1998) 11 AHC CK 0045

In the Allahabad High Court

Case No : C.M.W.P. No. 29612 of 1992, Connected with W.P. No's. 16463 of 1992, 19156 of 1992 and 7604, 17644, 3793 and 20410 of 1993

Mahalakshmi Sugar Mills Co. Ltd.

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 13-11-1998

Acts Referred:

Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1953 — Section 17(4)

Citation : (1999) 2 AWC 1218

Hon'ble Judges : R.R.K. Trivedi, J;R.K. Singh, J;Palok Basu, J

Bench : Full Bench

Judgement

Palok Basu, J.—Though three points of difference have been noted by my two revered brothers Hon'ble R. R. K. Trivedi and Hon'ble; R. K. Singh, JJ. in this bunch of writ petitions but the principal difference appears to be relating to the alleged claim of the Collector demanding 10% of recovery charges amounting to about Rs. 44 lacs on what was supposed to have been due against the petitioners' liability having arisen u/s 17 (4) of the U. P. Sugar Cane (Regulation of Supply and Purchase) Act, 1953.

2. In a nutshell the factual difference should be summarised before adverting to the aforesaid three points. There was a challenge as to the liability of the petitioners who are Sugar Mills to the demand of the Cane Commissioner on what should have been termed as payment of sugar cane price to the cane growers. Whether or not the State Advised Price was rightly demanded by the Cane Commissioner was initially the question. However, on the demand being raised by the Cane Commissioner, all the petitioners came up to this Court by various writ petitions and obtained interim orders but finally the writ petitions were dismissed and the stay order stood vacated. The Hon'ble Supreme Court entertained S.L.P., and passed interim orders directing payments to be made in installments. All the petitioners admittedly abided by the directions of the Hon'ble Supreme Court, went on paying the amounts in installments and thus

liquidating the entire amount said to have been due against them. Having thus received the entire amount, the Cane Commissioner wrote to the Collector withdrawing recovery proceedings which were said to have been initiated at the instance of the said Cane Commissioner. It has been argued on behalf of the petitioners that the Collector or some one on behalf of the Collector demanded the aforesaid amount of Rs. 44 lacs from the petitioners which according to the Collector purports to be "10% of the dues", which were to be paid by the petitioners to the Cane Commissioner.

3. The Hon"ble Supreme Court's decision subsequently dismissing the writ petitions as withdrawn does not leave any other matter surviving either in the Hon"ble Supreme Court or in this Court. The recovery charges have not been specifically dealt with either under the orders of the High Court or by the Supreme Court. Admittedly, the recovery certificate has been withdrawn.

4. Again admittedly, all that was done by the Collector for the purposes of making recovery on behalf of the Cane Commissioner, was issuing the citation and attaching some bags of sugar as mentioned in some of the writ petitions. That alone is the activity relating to the recovery by the Collector. To say in common parlance, the petitioners have been asked to pay too heavy charges for the said activity of recovery.

5. In this background, the three points of difference of opinion as formulated by the Bench of Hon"ble two Judges on 6.3.1998 are quoted below for ready reference :

"(1) Whether the present writ petitions are not legally maintainable and are hit by principles of constructive res judicata as the earlier petitions were dismissed?

(2) Whether the respondents are legally entitled to demand 10% of the amount shown in the recovery certificate as collection charges over and above the cost of processes under the Government Order dated 30.8.1974 issued under the Uttar Pradesh Revenue Recovery Rules, 1966?

(3) Whether the respondents become entitled to claim 10% of the amount shown in the recovery certificate as collection charges irrespective of the processes issued for recovery of the amount as arrears of land revenue?"

6. After hearing Sri Sudhir Chandra, learned senior counsel assisted by Miss Bharti Sapru on behalf of the petitioners and Sri R. P. Goel, learned Advocate General for the State, also aptly assisted by Sri Kripa Shanker Singh and Vishnu Pratap, there was scope for this Court to go into some other issues but Sri Sudhir Chandra perhaps rightly said that all that is now required by this Court is to resolve the difference between the two esteemed brother Judges and opt for either of the two views. On an overall reading of the situation let the view of Sri Sudhir Chandra prevail. Consequently, the views of Hon"ble R. R. K. Trivedi and Hon"ble R. K. Singh, JJ. were extensively referred to by the learned counsel for the parties and the judgment prepared by both of my learned brothers were

extensively noted during the course of the arguments by learned counsel for either side.

7. One may envisage finale to a legal proceedings which does not require a third Judge to choose between the respective opinions of two of his most esteemed brother Judges but the letter at times places onerous choice on the third individual Judge because he is called upon to choose the view either of the esteemed brother Judges. The stage has now been reached to complete that onerous responsibility.

8. Brother R. R. K. Trivedi, J. has relied upon the decision of the Hon''ble Supreme Court to advance each and every reason which he has adopted for coming to the conclusions that the present demand against the petitioners through the letter Impugned in the writ petitions cannot be sustained. This Court has already referred to above the possibility of holding that once the Hon''ble Supreme Court directed the petitioners to pay the entire arrears as demanded by the Cane Commissioner in installments whereafter the Cane Commissioner himself directed the Collector to return the recovery proceedings by calling it back, it is not understandable on what basis the Collector can by the impugned letter/ order call upon the petitioners to pay Rs. 44 lacs and odd as recovery charges.

9. In view of the aforesaid-discussion, all the reasonings and the logic applied by Hon''ble R. R. K. Trivedi, J. is accepted hereby and the conclusions arrived at in the last paragraph of the judgment prepared by Hon''ble R. R. K. Trivedi, J. are respectfully adopted.

10. Let the matter now go before the aforesaid Bench for orders in accordance with the Rules of the Court.