

(2016) 10 AHC CK 0081
In the Allahabad High Court
Case No : Writ C. No. 40567 of 2016.

Mawana Sugars Limited - Petitioner @HASH State of U.P. And 5 Others

Date of Decision : 07-10-2016

Acts Referred:

Uttar Pradesh Sheera Niyam Adhiniyam, 1964 — Section 8

Citation : (2016) 10 ADJ 560 : (2016) 6 AllWC 5464

Hon'ble Judges : Tarun Agarwala and Vipin Sinha, JJ.

Bench : Division Bench

Advocate : Diptiman Singh, Advocate, for the Petitioner; C.S.C, for the Respondent

Final Decision : Allowed

Judgement

1. We have heard Sri P.K. Bhalla, along with Sri Diptiman Singh, learned counsels for the petitioner and Sri Vishnu Pratap, learned Standing Counsel for the State.
2. The petitioner is a Company incorporated under the Companies Act, 1956 and has three sugar mills operating under the name and style of Mawana Sugar Works, Mawana in District Meerut, Nanglamal Sugar Complex, Nanglamal in District Meerut and Titawi Sugar Complex, Titawi in District Muzaffarnagar. The petitioner also has a distillery in Nanglamal Sugar Complex, Distillery Division Nanglamal, District Meerut which is engaged in the production of industrial alcohol. All the aforesaid three sugar mills of the petitioner are engaged in the business of manufacture of crystal sugar through vaccum pan process. Molasses is produced as a by product.
3. The storage, sale, supply and distribution of molasses is governed by the Uttar Pradesh Sheera Niyam Adhiniyam, 1964 (hereinafter referred to as "the Act"). Section 8 of the Act empowers the authorities to issue necessary directions relating to sale and supply of molasses. In exercise of the said power, various orders have been issued from time to time with regard to reservation and distribution of molasses produced by the sugar factories to various distilleries producing country liquor. In this regard, the State Government issued a policy in the year 2007 by which 20% of the production of molasses was reserved for

manufacturers of country made liquor. The said policy was challenged by a sugar factory, namely, Dhampur Sugar Mills Ltd. which matter went up to the Supreme Court. The Supreme Court decided the matter, which is reported in 2007(8) SCC 338, Dhampur Sugar Mills Ltd. v. State of U.P. and Others.

4. The background leading to the said decision was that the company was producing molasses and that the entire production of molasses was required by the company itself for its captive consumption but the said company was required to reserve 20% of its production for supply to manufacturers of country liquor. The main challenge in the case of Dhampur Sugar Mills Ltd. was that though the Company was producing molasses, the entire production was required by the Company itself for its captive consumption which otherwise was also insufficient. The Company, in fact, had obtained permission from the Government for import of molasses from other States as also from other countries. It was contended that since the Company did not have balance or extra stock of molasses, the authorities could not compel the Company to supply molasses as directed in various Government Orders and instructions. It was contended that such action was improper, illegal, arbitrary and unreasonable, inconsistent with the provisions of the Act as also violative of Articles 14 and 19(1)(g) of the Constitution. On the other hand, the stand of the Government before the High Court was that in accordance with the provisions of the Act and the Uttar Pradesh Sheera Niiyantran Niyamavali, 1974, it was open to the authorities to direct the Company to supply 20% molasses for the purpose of manufacturing country liquor. As the said action was in consonance with law, the Company was bound to supply 20% molasses for the said purpose and the action could not be termed as illegal or unlawful. The Supreme Court, after considering the policy, interpreted Clause 3 of the said policy as under:

"24. On merits, the learned counsel for the appellant drew our attention to an order dated June 9, 2004 which was relied upon by the High Court for dismissing the writ petition. Clause (3) of the said order relates to supply of 20% molasses for manufacturing country liquor. The High Court in its order reproduced the said clause which is in Hindi and reads thus:

"Pratyek Chini Mill Ke Sheere Ke Awashesha Staak Me Se Deshi Madira Ke Liye 20 Pratishat Sheere Ka Aarkshan Eisi Aashwani Yo Ke Liye Hogaa Jo Uskaa Upyog Deshi Madira Utpadan Me Karegi. Aisi Chini Mile Jinki Swayam Ki Bhi Aashwaniya Hai, Uktanusar Kiye Ja Rahe Sheere Ke Aarakshan Se Oos Seema Tak Bahar Rahegi Ki Chini Mill Sah-Aashwani Dwara Swayam Ke Vastavik Upbhog Ke Atirikt Jo Sheera Bachata Hai, Oos Per 20 Pratishat Ka Aarakshan Lagoo Hoga."

25. The English translation supplied by the appellant at Annexure P-3 reads thus:

"From the balance stock of molasses with each sugar mill, 20% of molasses shall be reserved for the distilleries manufacturing country liquor. The sugar mills having their own distilleries shall not be covered with this reservation to the extent that after the actual consumption of molasses in their captive distillery,

20% reservation shall be applicable on the balance stock."

26. The learned counsel for the writ petitioner, in our opinion, is right in contending that the said order applies only to balance stock (Avshesh staak). According to the High Court, 20% molasses must be reserved by each and every sugar mill for manufacturing country liquor notwithstanding whether there is balance stock or not. In other words, the High Court held that 20% molasses must be reserved by every sugar mill for the purpose of manufacturing country liquor. If such sugar mill is having facility of manufacturing country liquor, it should utilise the said stock for the said purpose, otherwise it should supply to the Authorities.

27. In our opinion, however, clause (3) applies only to excess stock of molasses, that is, molasses which is in excess of and not used for captive consumption by sugar factory and is thus balance stock. It is the assertion of the writ petitioner that the Company has no excess stock of molasses. Not only that, but it has to import molasses from other sources even for its own requirement for manufacturing industrial alcohol and such permission has been granted by the Central Government as well as by the State Government. If it is so, the case does not fall within the mischief of clause (3) and said clause cannot be pressed in service by the Authorities. The High Court, in our opinion, was not right in holding that all sugar mills were bound to supply 20% molasses to the Authorities under clause (3) of the Government Order dated June 9, 2004 irrespective of stock possessed. Only on that ground, the appeal deserves to be allowed."

5. And thus after so observing, the Supreme Court categorically held that the balance stock which was required to be reserved was 20% of the excess stock of molasses, that is to say, if the excess stock after captive consumption was 10,000 metric tonnes then 20% of the excess stock that was required to be reserved for supply to the manufacturer for country liquor would be 2500/- metric tonnes. The Supreme Court further held that the appeal of the Company was liable to be allowed and the direction issued by the authorities would not apply where there was no balance stock of molasses with the sugar mill. The Supreme Court also held:

"53. For the foregoing reasons, in our opinion, the appeal deserves to be allowed and the order of the High Court deserves to be set aside. It is, accordingly held that the directive issued by the respondents would not apply in case there is no balance stock of molasses with any sugar mill. The respondent-authorities have no right to compel such sugar mills to supply 20% molasses for the purpose of manufacturing country liquor."

6. The molasses policy for the year 2015-16 is based on the directions given by the Supreme Court as quoted aforesaid. The policy of 2015-16 which was introduced on 24.6.2016 after the commencement of the molasses year on 1.11.2015 provided that 25% of the total production of molasses shall be

reserved by a sugar mill for the supply to distilleries manufacturing country liquor. For such sugar factories having their own distillery, the policy directed that where the balance stock was in excess of 25% of the total production then the said excess stock would be reserved for supply to the distilleries producing country liquor. The policy further envisaged that where the balance stock was less than 25%, then reservation to that extent was required to be kept by the sugar mills and where there was no balance stock left in which case the reservation policy would not apply.

7. In the light of the aforesaid policy, which was introduced on 24.6.2016, the petitioner moved an application dated 5.7.2016 (annexure 4 to the writ petition) before the Controller of Molasses praying that the petitioner may be permitted to transfer the entire stock of molasses held by three sugar mills for its captive consumption. A categorical assertion was made that the petitioner required the excess stock for its captive consumption and that the petitioner does not intend to sell any quantity in the open market. The authority by the impugned order dated 27.7.2016 passed an order directing the petitioner to comply with the provisions of the molasses policy of 2015-16 and ensure its compliance. The petitioner being aggrieved by the said order has filed the present writ petition.

8. At the outset, we find that the impugned order is a non-speaking order. The controversy raised by the petitioner has not been addressed to and a cryptic order has been passed which does not make any sense. The Controller of Molasses should have addressed the issue as to whether the petitioner required the excess molasses for its captive consumption or not. At this juncture, we could have remitted the matter to the Controller of Molasses to decide the matter afresh by a reasoned and speaking order but considering the paucity of time coupled with the fact that the molasses season will now come to an end on 31.10.2016 the Court thus has proceeded to decide the matter on merit.

9. The basic stand of the authorities is, that the entire excess stock has to be reserved by the petitioner for supply to the distilleries manufacturing country liquor. This contention is patently erroneous and cannot be accepted in view of the categorical decision given by the Supreme Court in Dhampur Sugar Mills Ltd., (supra), based on which the excise policy of 2015-16 has been introduced by the State Government. We make it clear that under the policy of 2015-16 read with the decision of the Supreme Court in Dhampur Sugar Mills Ltd., (supra), the petitioner is required to reserve 25% of the excess stock.

10. In the instant case by our order dated 4.10.2016, we had directed the authorities to undertake the physical inspection of the stocks of molasses in the three sugar mills and the distillery of the petitioner's company and we found that there is only slight and negligible variance as per the stock book and as per the physical verification. The physical verification indicated a slight excess stock of molasses which according to us is based on combustion and other factors. We, accordingly, take the stock of molasses as recorded in the molasses statement, copy of which has been annexed as annexure no. 3 to the writ petition, as

under:-

S. No.

Item

F/S

1.

Opening Stock, 1st Nov. 15

11489

2.

Production 2015-16

96661

3.

Total Availability

108150

4.

Country liquor Obligation @ 25% of S.No.

2 24165

5.

Consumption of NSC Distillery in 2014-15

92156

6.

Balance Stock (3-5)

15994

7.

Actual Despatches

Free Sale

NSC Distillery

76193

Outside of season 2014-15

5707

A

Total

81900

B

Country Liquor of season 2014-15

8.

Closing stock as on 16.08.2016 (3-A)

26250

9.

Less Wastage

111

10.

Net Stock

26139

11. We find that as per the policy, the balance stock has been defined, namely:

"Balance stock for the molasses year 2015-16 opening balance of unreserved stock of molasses year 2015-16 in sugar mills of groups plus produced quantity of molasses in the molasses year 2015-16 less captive consumption of molasses in the molasses year 2015-16 (equivalent to captive consumption in molasses year 2014-15 upto 31.10.2015)."

12. Based on this calculation, we find that the opening stock is 11,489 metric tonnes. The production of molasses is 96,661 metric tonnes. The total availability of molasses is 1,08,050 metric tonnes. The captive consumption by the petitioner in the molasses year 2015-16 which is based on the actual consumption of molasses in the previous molasses year 2014-15 being 92,156 metric tonnes, the balance stock, thus, available in the molasses year 2005-16 would be 15,994 metric tonnes. Under the policy, the petitioner would be required to reserve 25% of the balance stock for supply to distillery manufacturing country liquor.

13. By our interim order dated 4.10.2016, we had directed the petitioner to transfer 5000 metric tonnes to its distillery for captive consumption.

14. The contention of the petitioner that they may be allowed to consume the entire stock of molasses cannot be accepted. Only 23 days are left in this molasses year. No details have been furnished by the petitioner with regard to their daily consumption for production of industrial alcohol. Consequently, the petitioner can only fall back on its captive consumption in the molasses year 2014-15.

15. Thus in the light of the decision of the Apex Court as mentioned aforesaid, the writ petition is allowed.

16. The impugned order passed by the Controller of Molasses is quashed.

17. A writ of mandamus is issued commanding the authorities to allow the petitioner to transfer the stock of molasses to its distillery to that extent leaving the petitioner to retain 25% of the balance stock of 15,994 metric tonnes as reserved for supply to the distilleries manufacturing country liquor as per the policy of 2015-16.

18. In the event, the petitioner requires further molasses for its captive consumption during this molasses year 2015-16, it would be open to the petitioner to move an appropriate application before the authority concerned which would be dealt with accordingly.