
(2006) 01 AHC CK 0212

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 72 (Tax) of 2006

Monnet Sugar Limited

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 30-01-2006

Acts Referred:

Uttar Pradesh Excise Act, 1910 — Section 10, 22, 7A, 8, 9

Uttar Pradesh Sheera Niyam Adhiniyam, 1964 — Section 2, 7A, 8

Citation : (2006) 01 AHC CK 0212

Hon'ble Judges : Prakash Krishna, J; A.K. Yog, J

Bench : Division Bench

Advocate : Yashwant Varma, for the Appellant; S.M.A. Kazmi, Addl. A.G. and S.P. Kesarwani, S.C., for the Respondent

Final Decision : Partly Allowed

Judgement

1. Monnet Sugar Limited petitioner, a company registered under the Companies Act having its registered office at Raipur, Chhattisgarh, owns a sugar manufacturing by vacuum pan process unit in Block Unn District Muzaffarnagar (State of Uttar Pradesh). Molasses is a "Bye-Product" of aforesaid sugar undertaking.

2. The Uttar Pradesh Sheera Niyam Adhiniyam, 1964 (referred to as "Adhiniyam") was enacted in the State of U.P. to provide in public interest for the control of storage, gradation and price of molasses produced by sugar factories in Uttar Pradesh and the regulation of supply and distribution thereof.

3. Molasses year:- as defined u/s 2(dd) of the Adhiniyam means the period beginning on the first date of November and ending on 31st day of October in the year next follows.

4. There is no dispute that in previous years also U.P. government had adopted a policy for disposal of molasses vide order dated June, 10, 2004, but sugar units in the state faced difficulties and had to approach this Court by filing writ

petitions. Some of these writ petitions are:-

1. CMWP No. 44775-2004 : Mawana Sugars Ltd. v. State of U.P. and Ors.;
2. CMWP No. 1284-2005 : Mawana Sugars Ltd. Through Special Attorney v. State of U.P. through Jt. Secretary and Ors.;
3. CMWP No. 2413-2005 : Triveni Engineering & Industries Ltd. v. State of U.P. through Jt. Secretary and Ors.;
4. CMWP No. 4683-2005 : M/s Tikaula Sugar Mills Ltd. through Director v. State of U.P. through Jt. Secretary and Ors.;
5. CMWP No. 14094-2005 : Monnet Sugar Ltd. v. State of U.P. and Ors.; and
6. CMWP No. 14686-2005 : Daya Sugar A Unit of Daya Engineering v. State of U.P. and Ors.

5. In aforesaid writ petitions, this Court passed interim orders staying the orders passed by the respondents which enabled these Sugar Units to dispose of molasses without intervention by the respondents.

6. Molasses produced in the preceding years, by and large, has been disposed of by respective sugar mills under interim orders of this Court, though these writ petitions are still pending. No useful purpose will be served now by hearing the writ petitions on merit - Apparently it will be nothing but a futile exercise. Leaned counsel for the parties also concede that the above writ petitions have been rendered infructuous and hence liable to be dismissed accordingly.

7. Government of U.P. vide notification dated November, 9, 2005 again formulated policy for molasses year 2005-06 (Annexure -5 to the writ petition) as endorsed by the Excise Department Notification dated November, 10, 2005 (Annexure-6 to the writ petition).

8. Under said policy, 20 per cent of "total quantity of molasses" produced by a Sugar Unit is to be kept reserved for ensuring supply to the distilleries engaged in manufacturing country liquor in the State of U.P.; balance quantity of molasses (of reserved 20%), if any, remain undisposed of, will be sold as per allotment order passed by "the Controller of Molasses" in favour of manufacturers of "Foreign liquor" and, further a Sugar Mill is to maintain 1: 4 ratio between reserved and unreserved quantity of molasses produced by them.

9. Petitioner has filed copy of "Office Memorandum" dated 18.12.2005 whereby Inspector (Molasses) has required the petitioner to dispose of/sell 20% reserved molasses as contemplated under above referred government policy.

10. It is contended that petitioner is subjected to pressure/coercion to sell "reserved-quota" of molasses below "Market-Price" to distilleries engaged in manufacturing country liquor or otherwise face penal action as per Notice/order dt. 18.12.2005 (Annexure-10 to the writ petition).

11. Petitioner being aggrieved, claims a writ of Certiorari to quash Government Policy contained in Government Notification dated 9.11.2005 as communicated by the Excise Department Notification dated 10.11.2005 (Annexure nos. 5 and 6 to the writ petition). There is, no relief in the Writ Petition to quash aforesaid Office- Memorandum/order issued by Inspector (molasses) dated 18.12.2005/ Annexure-10 to the writ petition.

12. On behalf of the petitioner it is argued that Notification dt.10.11.2005 (Annexure-6 to the writ petition) is in contravention of mandatory provisions of Section 7-A and Section 8 of the Adhiniyam since it did not have prior approval of the State Government. The argument has no force. In our opinion, there is sufficient compliance of statutory requirement of "prior approval" of the State Government u/s 8 of the Adhiniyam to the declaration of Notification dt. 10.11.2005 issued by the Controller of, Molasses. The Controller has issued the Notification as per policy notified by the State Government and hence the Notification has concurrence of the State Government. Under the Act Controller of Molasses has power to issue order - "to sell or supply" in prescribed manner.

13. The main grievance of the petitioner, however, is that the policy floated by the Controller of the Molasses does not protect "Fundamental-Right" of the petitioner to claim market price of molasses since distilleries have been assured of that Sugar Mills have no option but to sell reserved quantity of molasses to be to Distilleries manufacturing country liquor which in turn tend to exploit the situation in absence of adequate provision to compel these distilleries to pay "Market-Price" to the petitioner.

14. A counter affidavit has been filed on behalf of the respondents. Shri S.M.A. Kazmi, Addl. Advocate General assisted by Shri S.P. Kesarwani, standing counsel, referred to the order dated October, 7, 2005 passed by Excise Commissioner, U.P. addressed to the Principal Secretary, U.P. Government, Excise Department, to show that reservation; is for valid reasons as mentioned in para -2 of the molasses policy 2005-06, viz i.e. to make available quantity of sufficient molasses to the distilleries which is one of the main source of revenue of the Government. Reference is also made to the correspondence made on behalf of the distilleries to the Excise Commissioner/Controller of Molasses (Annexures C.A.8 and C.A. 9) to show that 18 distilleries in the State of U.P. indicated their requirement of molasses. The order dated November 21, 2005 issued from the office of Controller of Molasses/Excise Commissioner, U.P. (Annexure C.A. 10) contains, apart from others, two significant conditions vide Clause - 2 and 8 which provide that (a) 20 per cent of molasses shall be kept reserved by Sugar Mills for consumption of distilleries, (b) Distilleries shall lift said molasses on a price mutually agreed between Sugar Mill and Distillery and (c) Sugar Mills shall float tenders periodically on regular basis and it will be free to sell "reserved molasses" to any distillery so that the molasses is sold and lifted. Clause 9 of the policy, however, contemplated that in case a Sugar Mill, showed laxity or contravened or created obstacle in reserving or selling molasses under aforesaid

policy, the District Excise Officer shall take action under intimation to the Controller of Molasses. Same is the position with regard to the department order dated December 5, 2005/Annexure CA-11. Annexure-CA 12 contains minutes of the Committee comprising of Secretary, Excise Department of Government, Excise Commissioner, U.P. as Chairman and Representatives of Sugar Mills and Distilleries.

15. In reply, it is, however, alleged vide para - 9 of the Rejoinder Affidavit that no member or representative of sugar factories was invited or consulted. In our opinion, it is not relevant to entertain this dispute. The documents filed along with counter affidavit (viz Annexure CA -11 and CA-12) do indicate that the State Government had held meeting to have views of concerned persons through their representative and certain orders were passed on that basis. One of such decision is regarding issuing of tenders periodically for sale and lifting of reserved molasses.

16. Shri S.M.A. Kazmi, Addl. Advocate General also placed before Court a photostat copy of letter dated December, 13, 2005 which purports to have been written by Secretary, U.P. Sugar Mills Association to the Principal Secretary (Excise), Government of U.P., Lucknow with reference to Molasses Policy 2005-06. The relevant extract of the letter reads:-

We draw your kind attention to your letter No. 3154 E-3/Thirteen-2005-86/Z005 dated 9.11.2005 addressed to the Excise Commissioner, Allahabad regarding Molasses Policy for 2005-06.

We note that sugar factories are required to despatch reserved/unreserved molasses in the ratio of 1:4. However, the period in which the ratio is to be maintained has not been mentioned. In the last year's policy, the ratio was to be maintained on a 2 monthly basis.

This matter was discussed in our meeting held on 8.12.2005 and members were of the view that the period for maintaining the above ratio of 1:4 should be on a quarterly basis starting from 1st November, 2005. This will not only ensure parity of despatches of reserved/unreserved molasses, this will also avoid any undue harassment to the factories.

In view of the above, we would request you to kindly make an amendment in the molasses policy that the ratio of 1:4 of reserved/unreserved molasses will be maintained on a quarterly basis starting from 1st November, 2005.

We do sincerely hope that you will kindly amend the policy as suggested above.

17. The grievance of the petitioner, in brief, is that the "Policy" - while reserving quota of molasses for manufacturing country liquor Distilleries, does not assure "market price" to the Sugar Mills or otherwise to sell it in open market, if Distillery do not lift the "molasses" (reserved for them) after paying "market price" on the other hand a sugar mill is subjected to penal action for no fault of his own. It is contended that there must be some mechanism to protect the

interest of Sugar Mills. There is, however, other aspect i.e. "Sugar Mills" should not be allowed to exploit the situation by dictating price to the distilleries higher than actual market price.

18. The Controller has full power to resolve any factual dispute with reference to "sale and supply" of Molasses including the power to give direction to the Sugar Mills or a Distillery to comply with his order to ensure compliance of sale and lifting of reserved molasses in the light of policy 2005-06. And thus we find no infringement of Fundamental Rights.

19. Section 8 of Adhiniyam" reads:-

8. Sale and supply of molasses. - (1) The Controller [with the prior approval of the State Government by order require] may the occupier of any sugar factory to [sell or supply] in the prescribed manner such quantity of molasses to such person, as may be specified in the order, and the occupier shall, notwithstanding any contract, comply with the order:

Notwithstanding anything contained in Sub-section (1) the occupier of a sugar factory shall sell or supply forty per cent of the molasses produced in each quarter of a molasses year in the sugar factory to such chemical industries which are actual users of molasses and are granted licence under the United Provinces Excise Act, 1910:

Provided that such quantum of molasses as is not required by the said chemical industries may be sold or supplied by the occupier of the sugar factory to any other unit which is actual users of molasses with the prior approval of the Controller.

(2) The order under Sub-section (1) :

(a) shall require supply to be made only to a person who requires it for his distillery or for any purpose of industrial development:

(aa) may require the person referred to in Clause (a) to utilise the molasses supplied to him under an order made under this section for the purpose specified in the application made by him under Sub-section (1) of Section 7-A and to observe all such restrictions and conditions as may be prescribed.

(b) may be for the entire quantity of molasses in stock or to be produced during the year or for any portion thereof; but the proportion of molasses to be supplied from each sugar factory to its estimated total produce of molasses during the year shall be the same throughout the State save where, in the opinion of the Controller, a variation is necessitated by any of the following factors:

(i) the requirements of distilleries within the area in which molasses may be transported from the sugar factory at a reasonable cost;

(ii) the requirements for other purposes of industrial development within such area; and

(iii) the availability of transport facilities in the area.

(3) The Controller may make such modifications in the order under Sub-section (1) as may be necessary to correct any error or omission or to meet a subsequent change in any of the factors mentioned in Clause (b) of Sub-section (2).

20. Shri S.P. Gupta, Senior Advocate, has submitted that impugned order issued by Controller of Molasses is unauthorised and outside the scope of the Act. In this context the learned Counsel referred to sections 7A, 8, 9, 10 and 22 of the Act. It is also pointed out that Section 10, has been deleted w.e.f. 25.01.2000 by UP. Act No. 17 of 2000. The learned Counsel went to the extent of submitting that order passed by the Controller of Excise compelling the Sugar Mills to sell reserved quota of molasses to distilleries manufacturing country liquor without ensuring lifting of molasses in question on payment of adequate market price at appropriate time. As already noted above that the provisions of the Adhiniyam do not leave scope for Controller of Molasses and it is Subordinate Authority to act arbitrarily. We also find that in the aforementioned provisions there is nothing which authorises Controller of Molasses to compel Sugar Mills to sell the commodity (molasses) to distilleries on a illusory price which is not the market price or at par with the market price. In effect practical application do require the Controller of Molasses to intervene and pass adequate orders and take such measures which make the policy of the Government practical and purposeful.

21. The petitioner seeks to rely upon the Division Bench Judgment of this Court in the case of D.C.M. Shriram Industries Ltd. and others Vs. State of U.P. and others, The said judgment is not much avail to the petitioner. This Court vide para 12 of the said Judgment while it observed " We are not going into the question as to what was the prevailing market price in the open market at the relevant time as there is a factual controversy. Hence, we are sending the matter....

22. Aforesaid observation clearly reflects that this Court refused to undertake upon itself exercise of determining market price. Further we notice that in the aforesaid case of DCM (supra), Chemical Industries in question were impleaded as opposite party in the writ petition and they Were represented through counsel. In the instant case, however, the distilleries are not impleaded as respondents. Further, in the case of D.C.M. Shriram Industries Ltd. and Ors. (supra) dispute was referred to arbitrator - a retired Judge of this Court (as Arbitrator) with the consent of the parties.

23. In the present case, in absence of the concerned distilleries, question of consent order does not arise.

24. On the other hand, we find it expedient that in case of dispute/ grievance with respect to fixation of "market price" and/or "lifting of molasses by distilleries, aggrieved party may approach the Controller of Molasses to submit claim in writing. Considering the nature of the product in question, namely

molasses, we direct the "Controller" to pass appropriate orders within two weeks of receipt of "claim" in writing and till such decision, no coercive action shall be taken in the said matter.

25. Petition is partly allowed by moulding the relief as indicated above.

26. No order as to costs.