

(1994) 12 AHC CK 0086

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 36612 of 1994

M/s. Basti Sugar Mills. Co. Ltd.,

APPELLANT

Vs

State of Uttar Pradesh and others

RESPONDENT

Date of Decision : 22-12-1994

Acts Referred:

Essential Commodities Act, 1955 — Section 3

Sugarcane (Control) Order, 1966 — Section 2

Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1953 — Section 12, 13, 15, 15(2), 15(3)

Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Rules, 1954 — Rule 21, 22

Citation : AIR 1995 All 309

Hon'ble Judges : U.P. Singh, J;C.A. Rahim, J

Bench : Division Bench

Advocate : Miss. Bharati Sapru and Sudhir Chandra, for the Appellant; S.C., Dhananjai Awasthi and U.S. Awasthi, for the Respondent

Final Decision : Allowed

Judgement

1. In this writ petition, the petitioner has challenged the validity of the Reservation order dated 9-11-1994 (An-nexure-10 to the writ petition) in so far as it relates to the assignment of Tinich Rail centre to respondent No. 5 M/s. Babhnan Sugar Mills Ltd. By the said impugned order dated 9-11-1994, the Cane Commissioner, U.P. has issued the Reservation order for the Crushing season 1994-95 reserving Tinich Rail centre to the petitioner but assigning it once again to Babhnan sugar Mills Ltd.

2. The petitioner M/s. Basti Sugar Mills" Co. Ltd. Unit Walterganj is a company engaged in the manufacture of crystal sugar through the vacuum Pan Process. The unit at Walterganj was established in the year 1932 and is one of the first sugar Mills established in the State of Uttar Pradesh. This unit at Walterganj has a crushing capacity of 1100 T.C.D. and has a requirement of 20 lac quintals of sugar cane for the crushing season 1994-95 and it has started its crushing w.e.f.

14-11-1994. The crushing season is expected to last for a minimum of 180 days and, accordingly, the petitioner has a need to get a minimum supply of 20.70 lacs quintals of sugarcane for the crushing season 1994-95. On an average crushing season lasts for 150 days. In the previous crushing season 1993-94 most of the Sugar Factories crushed for approximately 180 days. The petitioner was unable to crushing beyond 108 days on account of shortage of sugarcane created by assignment of the Reserved areas of the petitioner to other neighbouring Sugar Factories. For the crushing season 1994-95 the Cane Commissioner has assessed the need of the petitioner to be 20.70 lakh quintals of sugarcane. In exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955, the Central Government promulgated the Order, called the Sugarcane Control Order, 1966, Clause 6 of the said order regulates the distribution and movement of sugarcane within the reserved area of sugar factories having regard to the crushing capacity of the factory, the availability of sugarcane in the reserved area and the need for production of sugar with a view to enable the factory to purchase the quantity of sugarcane required by it. The said clause further gives power to the Government to determine the quantity of sugarcane which a factory will require for crushing in a particular crushing season and further empowers to direct the sugarcane growers to supply sugarcane to the factory upon entering into an agreement. Clause 6(2) of the order states that the sugarcane growers shall be bound to supply sugarcane to the factory and the sugar Factories are also bound to receive supplies of the sugarcane under the Agreement. Clause 7 of the Sugarcane Control Order, 1966 further gives powers to the Central Government to give direction that no sugarcane shall be purchased for crushing in the reserved area by any other person other than the Factory. The supply of the sugarcane to the petitioner is regulated under the provisions of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 read with Sugarcane Control Order of 1966. Section 2(n) of the Sugarcane Control Order defines as assigned area of an area assigned to a factory u/s 15 of the Act. Section 2(n) defines reserved areas as the area specified in the Order made u/s 15. Section 2(1) defines crushing season which means the period beginning from 1st October in any year and ending on 15th day of July of the following year. Section 12 of the Act of 1953 requires the petitioner factory every year before the start of the crushing season to submit its requirement of the sugarcane to the Cane Commissioner and on the basis of the its requirements and a availability of sugarcane crushing capacity of the petitioner's factory etc. the Cane Commissioner reserves the area in favour of the Mill owners/petitioner's factory u/s 15 of the Act of 1953 read with order of 1966. Section 15 of the Act of 1953 gives powers to the Cane Commissioner to declare a reserved area of an assigned area for the particular factory. The reserved area or the assigned area is declared by the Cane Commissioner after consultations with the cane growers Co-operative Societies and factory owners for the purposes not only for reserving an area but also for the purposes of supply of sugarcane to the sugar factory. The area reserved by the Cane Commissioner, U.P. u/s 15 of the Act of 1953 read with clause 6 of the Order of

1966 is generally passed on or before the commencement of the crushing season which begins on 1st. October generally every year. Once an area has been reserved or assigned for a particular factory, it is obligatory upon that factory to purchase such quantity of sugarcane grown in that area and offered for sale to the factory as may be determined by the Cane Commissioner u/s 15(3) of the Act and it is also obligatory on the factory to purchase all the sugarcane grown in the reserved area of the assigned area which is offered for sale by the sugarcane growers or Societies u/s 15(2) of the Act. Section 28 of the Act of 1953 gives powers to the State Government to make rules and in accordance with the powers conferred on the State Government u/s 26 of the Act, the State Government has enacted U.P. Sugarcane (Regulation of Supply and Purchase) Rules, 1954 hereinafter referred to as the 1954 rules. Chapter VI of the rules of 1954 deal with reservation and assignment of an area. Under Rules 21 the petitioners before the start of the crushing season has to submit before 31st of August, an application giving the areas that are required by the factory for reserving or assigning an area in their favour for the supply of sugar-cane to the factory for the ensuing crushing year. The Cane Commissioner while declaring a reserved area or assigning an area in favour of the petitioner's factory u/s 15, is required to take into consideration the factors mentioned under Rule 22 of the Rules of 1954. u/s 13 of the Act of 1953, the State Government has further framed the U. P. Sugarcane (supply and Purchase) Order, 1954 (hereinafter referred to as the order of 1954). Under Clause 3 of the Order of 1954, the petitioner is required to give an estimation by 31st of October to the Cane Commissioner about the quantity of sugarcane that is required by them. Under Clause 3 of the Order of 1954, the petitioner is required to give an estimation by 31st October to the Cane Commissioner about the quantity of cane that is required by them. Under Clause 3(2) of the Order, the Cane Commissioner or the Co-operative Society within 14 days of the issuance of the order by the Cane Commissioner reserving or assigning an area under S. 15 of the Act has to make an offer to the petitioner to supply cane grown under the said reserved area and within 14 days from the receipt of such order the petitioner under clause 5(3) of the Order of 1954 has to enter into an agreement with the Co-operative Society concerned for the purchase of sugar-cane. Under Clause 4 an agreement has to be entered into in the prescribed forms between the petitioner and the Co-operative Societies of the reserved area. Under Clause 3 of the order of 1954, the purchase of sugarcane shall be over the entire crushing season in an equitable manner and due consideration shall be given to the variety and maturity of sugarcane. The said clause further stipulates that the cane grown in the reserved or assigned area of the Sugar Factory shall not be purchased by any other person except the Sugar Factory concerned. The various provisions as cited and quoted above indicate beyond a reasonable doubt that various factories submit an estimation of their requirement according to their crushing capacity and other factors etc., on the basis whereof the Cane Commissioner passes an order not only for reserving a particular area for a particular factory but also determines the capacity of cane that has to be purchased by a particular factory

in that crushing season. Orders that are passed by the Cane Commissioner are virtually completed before the crushing of sugarcane begins in the factory i.e. the orders are passed by the Cane Commissioner on or before the beginning of the crushing season i.e. in October every year. The policy of the State Government was that the reserved areas of a particular sugar factory remained undisturbed because the sugar factories are required to develop these reserved areas. Depending upon availability of cane estimated in the particular crushing season the Cane Commissioner may assign one or more reserved or assigned areas to a particular factory which is again depending upon the crushing capacity of the sugar factory concerned. If the availability of cane is less in that particular area on account of factors like draught, the Cane Commissioner for a particular year may assign lesser areas to a particular factory. On the other hand if the availability of cane is more, the Cane Commissioner may assign more areas so that the sugar factories may crush cane to their optimum crushing capacity. But in case, the Cane Commissioner cannot fix the quantity of sugarcane to be crushed by a particular sugar factory beyond its crushing capacity. In accordance with the provisions of Section 12 of the Act of 1953, the petitioner filed its application stating its demand for the crushing season 1994-95 before the commencement of the crushing season and before the issuance of the Reservation order for the crushing seasons 1994-95. In its application dated 25-8-1994, it- was specifically stated that the petitioner had a crushing capacity of 1100 T.C.D. and has a requirement of 19.80 lakh quintals of sugarcane for the crushing season 1994-95. Amongst the Cane purchase centres demanded by the petitioner, the petitioner made a specific demand of Cane centre Tinich, known as Tinich Rail centre, since this centre has been in the Reserved area of the petitioner for the last more than 40 years. It was developed by the petitioner during these 40 years and had an expected yield of 4.5 lakh quintals of sugarcane, in the present crushing season. The petitioner has taken this fact in its application that in the previous crushing season 1993-94 its factory at Walterganj had got serious set-back on account of assignment of Tinich Rail centre to respondent No. 5, Babhnan Sugar Mills Ltd. As Tinich Rail Centre is at a distance of a 8 Kms. from the Sugar Factory of the petitioner and the sugarcane from this centre is very conveniently and satisfactory transported by Rail. The petitioner has made an investment of more than Rs. 10 lacs for Rail siding to bring the sugarcane from Tinich and that the sugarcane area around Tinich Rail centre has been developed by the petitioner factory by various wings of cane cultivation and modern techniques since its inception and, therefore, the petitioner should not be deprived of its rights of drawing cane from the said area. It was stressed by the petitioner that the sugar-cane area of Tinich Rail centre constituting 1/4th of the total Reserved area of the petitioner's factory has as a very significant impact on the economics of the petitioner's factory. Due to non-reservation of the Tinich Rail Centre in favour of the petitioner, the factory could run only for 122 days in 1992-93 and 108 days in the year 1993-94. The petitioner further stated that it would be in the public interest to transport the sugarcane from Tinich of Eabhnan Sugar Factory covering a distance of

approximately 48 Kms. by road transport, whereas already there exists a Rail Centre at the distance of 8 Kms. from Walterganj Sugar Factory of the petitioner. The petitioner submitted that the cane from Tinich Rail Centre area has always been allotted to the petitioner's factory since its very inception and there is no justification at all to have any interference in it by any other factory. It was also submitted that last year, in the absence of effective pollution control measure, the factory of the petitioner remained closed for few days as per the order of Hon'ble Supreme Court. Now, effective pollution control measure has been installed and the Apex court as well as the U.P. Pollution Control Board allowed the function of the petitioner's factory on 19-11-1993.

3. In its application u/s 12 of the Act, the petitioner also stated the fact that during the previous crushing season 1993-94, the petitioner's factory at Walterganj got serious set back on account factory at Walterganj got serious set back on account of assignment of Tinich Cane Centre to Babhnan Sugar Mills Ltd., respondent No, 5. Aggrieved by the order of the State Government dated 6-1-1994, the petitioner had filed Writ Petition No. 6700 of 1994 and the High Court was pleased to quash the order on 30-3-1994 and directed the State Government to decide the matter relating to Tinich Rail Centre afresh. During the season 1993-94, respondent No. 5 was placed in an advantageous position by crushing harm to the petitioners' factory since the sugarcane of Tinich Rail centre falling in the Reserved area of the petitioner was allowed to them. The injustice done to the petitioner's factory was also elucidated in the judgment of the High Court. The respondent No. 5, managed to get the petitioner's area allotted in their favour on the pretext that their requirement of sugar-cane has been increased as a result of expansion of their factory. The petitioner requested the authorities to appreciate that the requirement of expanded capacity has to be made from their own reserved area unless the others have surplus cane. Respondent No. 5 has a larger sugarcane area to meet its requirement and need for the crushing season 1994-95.

4. It may be stated that the District Cane officer Basti has sent his recommendations to the Cane Commissioner on 24-9-1994 that during the present crushing season 1994-95 there is a demand of Cane Growers Society to reserve Tinich Rail Centre to the petitioner, since the petitioner's factory is now running fully well. This representation was made on account of various representations made by the Cane Growers Societies. Likewise, the Secretary of the Cane Growers Society, Tinich has also made a representation to the District Cane Officer that during the last two years although the Tinich Rail centre was assigned to Babhnan Sugar Factory (respondent No. 5) but it took no measures whatsoever to develop the area and, therefore, the Cane Growers of Tinich Rail centre wish to give their entire sugarcane to the petitioner's factory during the crushing season 1994-95. The Cane growers of Tinich Rail centre also complained against the respondent No. 5 that during the last two crushing seasons when the area had been" assigned to respondent No. 5, it indulged in underweighing the sugarcane resulting in undue losses to the cane growers.

5. Aggrieved by the order dated 1-11-1993 assigning the petitioner's area of Tinich Rail centre to respondent No. 5, the petitioner had preferred an appeal u/s 15(4) of the Act read with Rule 22 of the Rules of 1954 on which an illegal order was passed by the State Government on 6-1-1994. The said order dated 6-1-1994 was challenged by the petitioner in this court and the order of the State Government was quashed and the State Government was directed to decide the appeal within a period of ten days realising the urgency of the matter and the seasonal nature of the Industry. The appellate authority called the petitioner as also the respondents No. 3 and 4 for hearing on 11-4-1994 and passed an order dated 21-4-1994. The appellate authority failed to comply with the order of this court dated 30th March, 1994 and did not apply its mind in the light of the directions issued by this court in its judgment dated 30th March, 1994. In fact the, earlier order dated 6-1-1994 was repeated. The controversy was not decided stating that the crushing season has come to an end, it would not be worthwhile to decide the matter in the present crushing season. It remanded the matter for decision afresh to the Cane Commissioner before crushing season 1994-95. Aggrieved by the order dated 21-4-1994, the petitioner filed Writ Petition No. 17707 of 1994 on 13-5-1994 which is still pending for consideration in this court. The petitioner has submitted that in view of the seasonal nature of the Industry which lasts for nearly 180 days at a time in a year, the statutory remedy provided by way of an appeal is wholly futile since the appeal has not been effectively decided within the time and the controversy remained pending from year to year, as a result of which the petitioner in particular has suffered for the last two crushing seasons and Tinich Rail centre has not been restored to the petitioner for picking up sugar cane.

6. The main grievance of the petitioner is that in spite of all these facts which were alive in the mind of the Cane Commissioner, before passing of the Reservation order dated 9-11-1994 for the crushing season 1994-95, the Cane Commissioner has lost sight of these factors and has illegally assigned the Reserved Tinich Rail centre of the petitioner to the respondent No. 5. In these circumstances, the petitioner has challenged the impugned order of the Cane Commissioner dated 9-11-1994 in this writ petition.

7. When the argument proceeded and was about to be closed, the Cane Commissioner by his order dated 24th November, 1994 has modified the said impugned order dated 9-11-1994 allowing the petitioner to purchase sugarcane of Tinich Cane Purchasing centre as also the respondent No. 5 to purchase the sugarcane from the said Tinich Cane purchasing centre and in the view a supplementary counter affidavit was filed on behalf of the respondent No. 5 stating that this petition has become infructuous. The petitioner has taken serious objection to this and has contended that the said order has been illegally passed and the Cane Commissioner had absolutely no jurisdiction in passing such order and the same has been passed for extraneous and political consideration.

8. It has been contended that the Cane Commissioner has failed to take into

consideration the factors enumerated in Rule 22 of the 1954-Rules. The impugned orders dated 9-11-1994 as also 24-11-1994 has been passed in contravention of the provisions of Section 15 of 1953 Act read with Rule 22 of 1954 Rules.

9. On consideration of the entire facts and circumstances enumerated above, it appears amazing as to how a reserved area namely the Reserved Tinich Rail Centre to the petitioner could be maintained as Reserved for the petitioner and simultaneously assigned as well to respondent No. 5. The same area could not be reserved for the petitioner and assigned as well to respondent No. 5. The facts do not justify the assignment of Tinich Rail centre to respondent No. 5 for the crushing season 1994-95. The reasons for such assignment has not been given except mentioning that it is being assigned for the reasons which existed in the previous years. Thus, there was total non-application of mind. The Cane Commissioner was aware of the fact that during the last crushing season the petitioner's factory could not start crushing at the commencement of the season 1993-94 since it has been shut down on account of an order of the Supreme Court for not having adequate pollution safe-guards. The Cane Commissioner did not apply its mind to the fact, that the same condition did not exist, while passing the impugned order because the petitioner's factory had made adequate pollution safe-guards and the Supreme Court had lifted the restrictions, therefore, in no manner whatsoever the same reason could exist as it was during the previous years and, therefore, the impugned order was based on no consideration of the relevant facts but was passed on extraneous reasons. Even the order of this court dated 30-3-1994 was ignored and not taken into consideration. It is an arbitrary order and it has not taken into consideration the factors which are enumerated in Section 15 of the Act read with Rule 22 of 1954 Rules. The respondent No. 2, Cane Commissioner has failed to take into consideration the facts enumerated by the petitioner in its detailed application dated 20-8-1994 u/s 12 of the U. P. Sugarcane (Regulation of Supply and Purchase) Act, 1953, which would have made it obvious that all the factors enumerated in Rule 22 of the Rules of 1954 were in favour of the petitioner. Even this court in its judgment dated 30th March, 1994 had clearly stated that the Government had failed to take into consideration the above factore and it held that there were no reasons and justification for making the assignment of Tinich Rail centre in favour of respondent No. 5 . By such assignment the petitioner has been deprived of an approximately 4-5 lac quintals of sugar-cane for the crushing season 1994-95. The Cane Commissioner has deliberately ignored the fact which emerged in its meeting held in Gorakhpur before passing of the reservation order, inasmuch as, the representative of the Cane Growers Societies, who is Secretary and public representative clearly expressed their desire to make their supplies of sugarcane to the petitioner factory for the crushing season 1994-95 as before. There is no denial of the fact that the Tinich Rail centre forms an integral part of the reserved area for the petitioner. The petitioner has developed this centre for last more than 50 years and has even

developed Rail siding to facilitate the easy loading and transportation of the sugar-cane. And for all these years the petitioner has been purchasing sugarcane from its reserved Tinich Rail centre area except the short break on account of the Supreme Court order which was passed on the basis that the petitioner factory had not adequate pollution safe-guards and for that reason it had been shut down during the season 1993-94. For these very reasons the order dated 24-11-1994 modifying the impugned order dated 9-11-1994 also suffers from the same infirmities and an area Reserved for the petitioner would not be assigned at the same time to respondent No. 5.

10. In this view, the orders dated 9-11-1994 as also 24-11-1994 are quashed and the writ petition is allowed but without order as to costs.

11. Petition allowed.