

(2014) 01 KAR CK 0024

In the Karnataka High Court

Case No : Writ Petition No's. 27580-27585 of 2010 (GM-RES)

M/s. Uttam Distilleries Ltd. and M/s. Uttam Sugar Mills Ltd.	APPELLANT
Vs	
The Directorate of Sugar Government of India and Others	RESPONDENT

Date of Decision : 02-01-2014

Acts Referred:

Citation : (2014) 2 KarLJ 114

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : S.S. Halalli, for the Appellant; H. Jayakara Shetty, CGC for R1, Smt. Pramodhini Kishan, HCGP for R2 to R4, Sri V.R. Sarathy, for M/s. Ravivarma Kumar Associates for C/R5, Sri S. Kalyan Basavaraj, for R7, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Venugopala Gowda, J.—Challenge in these writ petitions is to the orders dated 18.02.2010 and 05.08.2010, vide Annexure-N and AJ respectively, passed by the 1st respondent and the orders dated 22.06.2010 and 14.07.2010, vide Annexures - AE and AG respectively, passed by the 3rd respondent and for issue of a direction to the 3rd respondent, to issue Distance Certificate to the 1st petitioner, without taking into consideration the application filed by the 5th respondent and for directing the 3rd respondent, to endorse the Distance Certificate dated 15.03.2007, in the name of the 1st petitioner or issue of a fresh Distance Certificate in favour of the 1st petitioner, in terms of the Distance Certificate dated 15.03.2007 issued in favour of the 2nd petitioner and for grant of consequential reliefs. Brief facts of the case are that the 2nd petitioner obtained an IEM dated 23.05.2007 from the Government of India, by following the procedure as laid down under Clause 6B of Sugarcane (Control) (Amendment) Order, 2006 and furnished the performance guarantee of Rs. 1,00,00,000 to the Chief Director (Sugar), Government of India. 2nd petitioner filed an application before the Government of Karnataka, for approval of the proposed project i.e., setting up of a Sugar Mill at Mangenakoppa, Khanapur

Taluk, Belgaum District. Government of Karnataka approved the proposed project, with a condition that the 2nd petitioner shall obtain all statutory and necessary clearances and shall submit regular mile stone/progress in implementation of the project. The approval accorded was valid for a period of two years from the date of issue i.e., from 27.02.2008.

2. Government of India having noticed the inaction on the part of the 2nd petitioner in the matter of setting up of new Sugar Factory at Mangenakoppa, Khanapur Taluk, Belgaum District and having informed the 2nd petitioner, to indicate, whether it is still interested in setting up the Sugar Factory on the said location and to indicate the effective steps taken, within two years of the acknowledgment of IEM, to implement it, and if not interested, to send the request for withdrawal of the Bank guarantee, the 2nd petitioner by a communication dated 09.02.2010, requested the Chief Director (Sugar), Government of India, New Delhi, to issue necessary order to submit the fresh IEMs in lieu of the two IEMs and to return the Bank guarantees submitted by it. Accordingly, the two Bank guarantees were returned in original and the two IEMs were derecognized. The 2nd petitioner was notified that, if it is desirous of obtaining fresh IEMs for setting up of Sugar Mills at the same location, it should follow the procedure outlined in Clause 6B of the Sugarcane (Control) (Amendment) Order, 2006.

3. The 5th respondent having filed an application for issue of Distance Certificate, the 2nd petitioner's IEM having stood derecognized, a letter was sent to the Deputy Commissioner, Belgaum District, to issue the Distance Certificate, under copy to the Survey of India, to issue Distance Certificate between nearby existing or proposed Sugar Factory and the 5th respondent proposed Sugar Factory. Distance Certificate from the Survey of India having been received, 3rd respondent considered the application of 5th respondent and issued Distance Certificate in accordance with the provisions of the Sugarcane (Control) (Amendment) Order 2006.

4. 1st petitioner filed W.P. No. 17190/2010, to direct the Directorate of Sugar in Karnataka and Commissioner for Cane Development, to grant Distance Certificate under Sugarcane (Control) (Amendment) Order, 2005, in its favour, for setting up of Sugar Mill at Mangenakoppa Village, Khanapur Taluk, Belgaum District. A memo having been filed seeking withdrawal of the writ petition, the memo having been taken on record, writ petition was dismissed as withdrawn on 24.08.2010.

5. These writ petitions were filed on 01.09.2010, for grant of reliefs, noticed supra.

6. Sri. S.S. Halalli, learned advocate, contended that the impugned orders of the respondents are arbitrary and illegal. He submitted that on account of collusive acts of the respondents, to favour the 5th respondent illegally, the petitioners, who took lawful steps for establishment of a new Sugar Milk at Mangenakoppa

Village, Khanapur Taluk, Belgaum District, have been made to suffer the injustice. He submitted that only to deprive the petitioners of their legitimate rights under law, the 5th respondent has been illegally favoured in the matter of establishment of Sugar Factory at Golihalli Village, Khanapur Taluk, Belgaum District. He further submitted that the 5th respondent having not indicated in the letter dated 04.09.2009, name of the 2nd petitioner, in the list of the Sugar Factories in the area and there being suppression of material fact and the Order dated 11.03.2010 of Government of Karnataka, the impugned orders warrant interference.

7. Sri. V.R. Sarathy, learned advocate for the 5th respondent, on the other hand contended that the order of derecognition dated 18.02.2010, vide Annexure-N, was not questioned in W.P. No. 17190/2010 and the writ petition was not prosecuted, but was withdrawn. He submitted that the 2nd petitioner, on its own motion, as per Annexure-M, voluntarily sought withdrawal of the Bank guarantees, since it had failed to take effective steps, as required under the provisions of the Sugarcane (Control) (Amendment) Order, 2006. He further submitted that a letter dated 09.02.2010 having been addressed seeking the withdrawal of Bank guarantees and IEMs, the Central Government returned the Bank guarantee/s and passed consequential order regarding derecognition of IEMs of the 2nd petitioner. He submitted that, on the date the Distance Certificate was issued in favour of the 5th respondent, there existed no Sugar Mill, as contemplated under the Standing order and the Distance Certificate issued in favour of the 5th respondent being valid, no interference in the matter is warranted. He submitted that the 1st petitioner being not an aggrieved party, has no locus-standi to file the writ petition/s, which are bad for mis-joinder of unnecessary parties and the causes of action.

8. Perused the writ petition record. The point for consideration is "whether the 2nd petitioner waived its right of setting up Sugar Mill at Mangenakoppa Village, Khanapur Taluk, Belgaum District?"

9. The 2nd petitioner having obtained IEM dated 23.05.2007 and the Distance Certificate for the designated site issued by the Commissioner for Cane Development and Director of Sugar, Government of Karnataka, submitted on 19.06.2007, the Bank guarantee dated 18.06.2007 for Rs. 1,00,00,000/- (covered for 18 months, upto 17th December 2008), issued by the State Bank of India, SIB Branch, Navyug Market, Ghaziabad, in favour of the Chief Director (Sugar), Department of Food and Public Distribution, Ministry of Consumer Affairs, Government of India, New Delhi for its upcoming project at Mangenakoppa Village, Khanapur Taluk, Belgaum District.

10. The 2nd petitioner, by a communication dated 27.01.2010, requested the Director of Sugar, Office of Sugar Directorate, New Delhi-01, to issue "No Objection Letter" for implementation of the project by the petitioner No. 1, in its place and sought issuance of necessary IEM. The 2nd petitioner sent a communication dated 09.02.2010 (Annexure-M), which being relevant, is

extracted herein below:

Dear Sir,

Sub Permission to file New IEMs & Bank Guarantees

As directed by you we are submitting our request to withdraw the following IEMs and the Bank Guarantees of Rs. 1.0 Crores each:

- a) IEM No. 1514/SIMMO/2007 dated 23rd May 2007 for upcoming project at Village: Mangenkop, Khanapur, District Belgaum, Karnataka.
- b) IEM No. 1513/SIA/IMO/2007 dated 23rd May 2007 for upcoming project at Village: Ujjanatii, Bailhongal, District Belgaum, Karnataka.

In view of the above and as advised you, we request you to kindly issue necessary order to submit fresh IEMs in lieu of the above IEMs and Bank Guarantees.

Kindly grant us your permission at the earliest and oblige.

(emphasis supplied)

Having received the said communication, a letter dated 18.02.2010, vide Annexure-N, was sent and the same being relevant reads as follows:

To

Chief Executive M/s. Uttam Sugars Ltd., 7-C, 1st Floor, "J" Block, Shopping Centre Saket, New Delhi -110 017.

Subject: Setting up of new sugar factory at village-Mangenkop, Khanapur, District-Belgaum, Karnataka-reg.

Sir,

I am directed to invite your attention to this Directorate's letter of even number dated 31st August, 2009 on the above mentioned subject wherein you were advised to indicate whether you are still interested in setting up sugar factory at the above location or not. Vide your letter No. USML/09-10 dated 09.02.2010, you have requested us to return the Bank guarantee submitted in reference to IEM No. 1514/SIA/IMO/2007 dated 23.5.2007 acknowledged for setting up of a new sugar factory at village-Mangenkop, Khanapur, District-Belgaum, Karnataka. Accordingly, the bank guarantee No. 0929807BG0000054 dated 18.06.2007 is returned herewith, in original and your said IEM No. 1514/SIA/IMO/2007 dated 23.05.2007 stands de-recognized as far as the provisions of Sugarcane (Control) Order, 1966 are concerned. However, if you are desirous of setting up of sugar mill at the same location, you are advised to follow the procedure outlined in Clause 6B of Sugarcane (Control) (Amendment) Order, 2006.

The issue with the approval of the Chief Director (Sugar).

(emphasis supplied)

11. In response to a letter dated 24.02.2010 of the 2nd petitioner, Government Order dated 11.03.2010 was passed, according approval to the proposal of 2nd petitioner for change of name to "M/s. Uttam Distilleries Ltd.", for implementation of the project of manufacturing White Crystal Sugar of capacity 50,000 TCD with 25MW Co-generation Power Plant and 75 KLPD Distillery. The 2nd petitioner having made a request on 15.03.2010 for Distance Certificate" under Clause-6B of Sugarcane (Control) (Amendment) Order, 2006, the 1st petitioner submitted a communication dated 31.03.2010 with a request to issue "Distance Certificate."

12. From the above, it is clear, that on the request made by the 2nd petitioner, vide Annexure-M, the Bank guarantees were returned to it and the related IEMs were derecognized vide Annexure-N. Thus, the 2nd petitioner, which had a legal right, having waived the same, cannot seek the enforcement. In law, Waiver" is an intentional relinquishment of a right. It involves conscious abandonment of an existing legal right, advantage, claim or privilege, which except for such a waiver, the party could have enforced it. The action is nothing but an agreement, not to assert the right. The 2nd petitioner cannot approbate and reprobate at the same time.

13. The arrangement, if any, between the petitioners, having not been the subject matter of consideration before the Chief Director (Sugar), Government of India, the petitioners have no right to seek issuance of a fresh Distance Certificate in favour of petitioner No. 1, in terms of the Distance Certificate dated 15.03.2007, which was issued in favour of 2nd petitioner. In the undisputed facts and circumstances of the case, noticed supra, the principles of waiver being attracted, the 2nd petitioner cannot have any grievance, as against the impugned orders passed by respondents 1 and 3. 1st petitioner has no locus to question the impugned orders. These writ petitions are devoid of any merit and the petitioners are not entitled to any relief.

In the result, the writ petitions are dismissed, with no order as to cost.